Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires the Customs Service to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is based on a threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) is applicable to this order. Therefore, the Department will direct the Customs Service to assess, upon further advice, antidumping duties on all unliquidated entries of softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct the Customs Service to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, the Customs Service will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the amended weighted-average antidumping margins noted above.

Pursuant to section 735(a) of the Act, this notice constitutes the antidumping duty order with respect to Certain Softwood Lumber Products from Canada.

This order is published pursuant to section 736(a) of the Act and 19 CFR 351.211.

Dated: May 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–12988 Filed 5–21–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada

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

ACTION: Notice of Amended Final Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada.

EFFECTIVE DATE: May 22, 2002.

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

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (2000).

Scope of Order

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

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

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

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

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

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*See* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at WWW.IA.ITA.DOC.GOV, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits*: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be

substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the U.S. Customs Service upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the Customs Service may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

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

Exclusion of Maritime Products

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

Company Exclusions

In the *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545, 15547 (April 2, 2002) (*Final Determination*), we granted exclusions to the following companies: Armand Duhamel et fils Inc., Bardeaux et Cedres, Beaubois Coaticook Inc., Busque & Laflamme Inc., Carrier & Begin Inc., Clermond Hamel, J.D. Irving, Ltd., Les Produits. Forestiers. D.G., Ltee, Marcel Lauzon Inc., Mobilier Rustique, Paul Vallee Inc., Rene Bernard, Inc., Roland Boulanger & Cite., Ltee, Scierie Alexandre Lemay, Scierie La Patrie, Inc., Scierie Tech, Inc., Wilfrid Paquet et fils, Ltee, B. Luken Logging Ltd., Frontier Lumber, and Sault Forest Products Ltd. For further discussion of this issue, *see* the ''Company Exclusions'' section of the *Issues and Decision Memorandum.*

Amended Final Determination

On March 21, 2002, in accordance with section 705(a) of the Act, the Department made a final determination that countervailable subsidies were being provided with respect to certain softwood lumber products from Canada. *See Final Determination.*

On April 8, 2002, the Coalition for Fair Lumber Imports Executive Committee (petitioners) and the Governments of Canada, Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and Quebec (collectively, respondents) alleged ministerial errors in the calculations of the *Final Determination.* On April 15, 2002, petitioners and respondents submitted rebuttal comments regarding the allegations.

On April 25, 2002, we issued a memorandum concerning these allegations in which we amended the *ad valorem* rate calculated in the *Final Determination.* These ministerial error allegations and the Department's responses to the allegations are summarized below. For a more detailed discussion of these ministerial error allegations, *see* the April 25, 2002, Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, through Bernard T. Carreau, Deputy Assistant Secretary for Import Administration (*Ministerial Error Memorandum*), a public document on file in room B–099 of the main Commerce Building.

I. General Allegations

A. Treatment of Company-Specific Sales Data in the Country-Wide Rate Calculations

Respondents explain that the initial version of the Department's final

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

calculations failed to bracket business proprietary data pertaining to the Province of Ontario. They state that to correct this inadvertent disclosure of business proprietary data, the Department erased the data in question from the final calculations. Respondents argue that rather than remove the business proprietary data from the calculations, the Department should include the information in question with the necessary brackets and recalculate the country-wide rate consistent with the Department's *Final Determination*.

Department's Position: We disagree with respondents. The data in question pertained only to a single cell in our spreadsheet calculations. However, redacting that single cell would not have adequately prevented the general public from deriving the proprietary figure. Therefore, to appropriately protect the proprietary data in question and to provide the general public with a meaningful summary of the country-wide rate section of the final calculations, we determined to remove the proprietary data at issue. We find our decision is the best solution as the removal of the proprietary figure from the calculations did not alter the final, country-wide rate nor did it change the portion of the country-wide rate attributable to Ontario.

B. Inclusion of Sales Values of Excluded Companies From the Yukon Territory in the Country-Wide Rate Calculation

Respondents allege that the Department inadvertently neglected to add the sales of excluded companies from the Yukon Territory in the country-wide rate section of the final calculations. They argue that if the Department did not intend to use the excluded sales from the Yukon Territory, then the Department should add all excluded company shipments in the calculation.

Department's Position: We disagree with respondents that the Department should have included excluded sales of the Yukon Territory and total shipment values for the Yukon and Northwest Territories in the country-wide section of the final calculations. In the March 21, 2002 *Issues and Decision Memorandum* that accompanied the *Final Determination*, we explained that although petitioners alleged that stumpage programs from the Yukon and the Northwest Territories conferred countervailable subsidies upon producers of subject merchandise, we were not examining those programs in the *Final Determination* ''because the amount of exports to the United States from the two Territories is insignificant.'' *See* the ''Provincial Stumpage Programs Determined to Confer Subsidies'' section of the March 21, 2002, *Issues and Decision Memorandum to Faryar Shirzad, Assistant Secretary, for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary, for Import Administration* (*Issues and Decision Memorandum*), a public document on file in room B–099 of the main Commerce Building. Consistent with the approach explained in the *Issues and Decision Memorandum,* we did not calculate separate benefits for the two Territories.

C. Inclusion of Sales Values From the Yukon and Northwest Territories in the Country-Wide Rate Calculation

Respondents allege that the Department inadvertently neglected to add the total shipment values of lumber from the Yukon and Northwest Territories in the country-wide rate calculations. Respondents argue that though the Yukon and the Northwest Territories did not provide data from total shipment values of softwood lumber, the Government of Ontario (GOO) did report export shipments for those territories. Respondents assert that the export shipments for the Yukon and the Northwest Territories should be inserted into the total lumber shipment values column (the third column of the table on page 3 of the final calculation memorandum) of the country-wide rate calculations.

Department's Position: As explained above, we determined not to calculate provincial benefits (*i.e.,* numerators) and, thus, provincial rates for the Yukon and Northwest Territories. Consequently, including sales of lumber shipments from the these two territories, which could only be used in the denominator of a provincial rate calculation for each province, cannot mathematically affect the country-wide rate.

D. Inflation Adjustment of Figures Used To Derive the POI Value of Remanufactured Products

In the *Final Determination,* the Department used 1997 figures from Exhibit 15 of the February 15, 2002 Statistics Canada Verification Report to derive the value of remanufactured products during the POI. *See* the ''Inclusion of Remanufactured Products in the Denominator of the Subsidy Calculation'' section of the *Issues and Decision Memorandum*. Respondents claim that the Department's final calculations indicate that the data were inflation adjusted. They further claim that the final calculations do not adjust for inflation. To correct this error, they argue that the Department should adjust the 1997 values included in Verification Exhibit 15. They further argue that if the Department does not make this correction, then it should strike the words ''Inflation Adjusted'' from the table on page 5 of its final calculations.[2]

Petitioners also argue that the Department should adjust the values on page 5 of the final calculations. They claim that it is clear that the Department intended to use an inflation-adjusted figure when deriving the value of remanufactured products during the POI.

Department's Position: We disagree that the value of remanufactured products during the POI should be adjusted for inflation. Our intention in the *Final Determination* was not to adjust the values in Verification Exhibit 15 for inflation. This is evident in our description of how we used the values from Verification Exhibit 15: ''we determined the percentage relationship between the 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.'' *See* the ''Inclusion of Remanufactured Products in the Denominator of the Subsidy Calculation'' section of the *Issues and Decision Memorandum.*

Regarding the calculation of the value of remanufactured products during the POI, we ackowledge that our calculations contain a clerical error. In the *Final Determination,* we intended to use a ''percentage relationship'' (*i.e.,* the ratio of in-scope merchandise outside of SIC 2512 but inside Group 25 to products inside Group 25) to derive the value of remanufactured lumber products. However, in the final calculations, instead of using the data from Verification Exhibit 15 to derive a percentage relationship, we inadvertently used actual values to derive a remanufactured figure. For an explanation of the formula we used to correct this error, see *Ministerial Error Memorandum* at 5.

E. Value of In-Scope Remanufactured Products as Reported by the Pacific Forestry Center (PFC)

In the *Final Determination,* the Department chose not to use the values

[2] On this matter, respondents appear to alter their argument in their rebuttal comments. Respondents claim that the *Issues and Decision Memorandum* makes clear that the Department did not intend to adjust for inflation as petitioners suggest. They further argue that nothing in the final calculations indicates that the Department adjusted for inflation. Thus, they contend that the Department did not intend to adjust for inflation.

from the PFC study to estimate the value of remanufactured lumber shipments produced by Canadian firms during the POI because it found the study flawed in several important respects. *See* the ''Use of the Pacific Forestry Center's Study of Remanufactured Products from British Columbia'' section in the *Issues and Decision Memorandum.* Respondents allege that the grounds on which the Department dismissed the study are not supported by the facts on the record and, thus, the Department should amend its *Final Determination* to reflect that the PFC study provides an appropriate estimate of the value of remanufactured products produced in Canada during the POI.

Department's Position: Respondents' allegation does not meet the standard for a ministerial error as defined by section § 351.224(f) of the Department's regulations; rather, the allegation challenges a methodological choice. Therefore, the Department is not addressing respondents' allegations on this matter.

F. *Ad Valorem* Rate Calculations for Federal and Other Non-Stumpage Programs

In the *ad valorem* rate calculations for the federal and other non-stumpage programs, the Department included in the denominator ''total lumber shipments, inclusive of remanufactured products.'' Respondents contend that the values in the calculation inadvertently exclude the value of ''by-products'' that is in the *ad valorem* rate calculations of the stumpage programs. Respondents argue that the Department should recalculate the *ad valorem* rates for the federal programs and other non-stumpage programs using a divisor that consists of total lumber shipments, inclusive of remanufactured products, and by-products.

Department's Position: We disagree with respondents that the Department inadvertently excluded the value of by-products in the calculation of the federal and other non-stumpage programs. Each of the programs for which we were able to quantify a benefit was designed to benefit lumber producers or sawmill operators. Accordingly, we calculated the provincial rates for these non-stumpage programs by dividing the benefit amounts ''by the f.o.b. value of total sales of softwood lumber for the POI * * *'' *See e.g.,* the ''Forest Renewal B.C.'' section in the *Issues and Decision Memorandum.* Therefore, the Department's decision to calculate the *ad valorem* rates for these non-stumpage programs using a denominator that did not include by-products was intentional and, thus, does not constitute a ministerial error within the meaning of section § 351.224(f) of the Department's regulations.

II. Province-specific Allegations

A. Alberta

1. Billed Volume and Holding and Protection Charge

Petitioners argue that two ministerial errors were made when the Department calculated the benefit conferred by the stumpage program in Alberta. First, petitioners maintain that on page A–7 of the Calculation Memorandum, the second row of charts incorrectly used the SPF billed volume for each tenure type to calculate the per-unit reforestation levy for all species, while the third row of charts incorrectly used the all-species billed volume for each tenure type to weight the SPF administered stumpage rate calculation.

Second, petitioners argue that on page A–7 of the Calculation Memorandum, the calculation of the per-unit holding and protection charge was derived by dividing the total cash payments as provided by the Government of Alberta (GOA) by the harvested volume in each tenure type when the payments should have been divided by billed volume. Petitioners maintain that when the Department divided the total holding and protection charges by a volume figure to convert the lump sum payment to a per-unit charge, it should have used the same volume that it used when converting the per-unit benefit to a total provincial benefit (*i.e.,* billed volume).

Department's Position: Regarding the first point, we agree with petitioners. We have corrected this error.

Regarding petitioners' second point, we disagree. Holding and protection charges are assessed by the GOA on harvested, not billed, volume (*see* page AB–IV–9 of the GOA's June 28, 2001 questionnaire response), and, therefore, we are correct in dividing by the harvested volume to arrive at the per-unit holding and protection charge.

2. In-kind Costs Relating to DTLs and DTPs

Respondents argue that, with respect to Alberta, the Department made a ministerial error in calculating the total stumpage payments made for coniferous timber harvested under deciduous timber licenses (DTLs) and deciduous timber permits (DTPs). Respondents maintain that the Department inadvertently failed to include the in-kind costs associated with harvesting this wood in its calculations.

Department's Position: We disagree with respondents that we inadvertently failed to include the in-kind costs associated with harvesting coniferous timber under DTLs and DTPs. Although respondents are correct in stating that the GOA supplied the costs applied to DTLs and DTPs, we note that it failed to break out these costs into costs associated with harvesting coniferous timber on deciduous stands and costs associated with harvesting deciduous timber on the same stands. Because these are deciduous timber tenures and most of the timber harvested from them is deciduous timber (*i.e.,* non-subject merchandise), and because respondents did not provide a breakdown of costs, we have chosen not to include the costs associated with harvesting coniferous timber under DTLs and DTPs in our stumpage calculations.

B. British Columbia

1. Calculation of Softwood Logs Used for Sawmilling

Petitioners assert that the Department made a ministerial error in calculating an estimate of the Crown softwood timber harvest used for sawmilling. Petitioners state that the Government of British Columbia (GBC) did not disclose the volume of ''sawlogs'' used by sawmills and the Department, therefore, attempted to derive the total POI sawlog harvest from the total volume of logs harvested and sent to sawmills in 2000. Petitioners allege the Department ''mistakenly'' multiplied the harvest for sawlogs by the percentage of total logs harvested, including pulp and veneer, to determine the benefit.

Respondents claim that the Department specifically rejected petitioners' argument in the *Issues and Decision Memorandum*, thus, the Department made no inadvertent mistake in its calculations. *See* the ''Calculation of the Subsidy'' section for the Province of British Columbia in the *Issues and Decision Memorandum.*

Department's Position: For the *Final Determination*, the Department multiplied the sawlog harvests for the Coast and Interior by the respective percentages of total logs going to sawmills, and multiplied the resulting figures by the calculated price differentials (inclusive of adjustments) to arrive at the benefits, separately for the Coast and Interior. The Department did not mistakenly use the percentage of total logs to determine the sawlog harvest that goes to sawmills. Moreover, the Department clearly stated its approach on this issue in the *Issues and Decision Memorandum. Id.*

2. The Department Inadvertently Failed To Include Allocated G&A Expenses in the Adjustment for Coastal Logging Camp Expenses

Respondents assert that the Department inadvertently failed to include an allocation of G&A expenses for logging camps, as evidenced by the fact that there is no line entitled ''Allocation of G&A'' under the Logging Camp Expenses category in the Calculation Memorandum. Respondents claim that this inadvertent error resulted in the Department understating the logging camp adjustment used in the final calculations.

Petitioners state that the Department declined to make an adjustment for differences in total operating costs between Coastal B.C. and Western Washington, and only made adjustments for particular costs where differences existed (and were quantified to the Department's satisfaction). Further, petitioners argue that the adjustment, attributable to ''Camp Operations and Overhead,'' already includes G&A costs.

Department's Position: It was the Department's intent to allocate G&A expenses only to those cost categories that clearly did not incorporate administrative expenses within the reported costs associated with the activity. For costs associated with logging camps, petitioners correctly note that ''overhead'' is included within the reported costs, and has therefore been accounted for in the Department's calculations. Thus, respondents' allegation does not constitute a ministerial error.

3. The Department Inadvertently Used the Wrong Denominator When Calculating the Margin for the Forest Renewal Program

Respondents allege that the Department inadvertently excluded sales of by-products from the denominator when it calculated the benefit for the GBC's Forest Renewal program. They claim that the Department's decision not to include by-products in the denominator is inconsistent with its decision to include by-products in the subsidy calculations of B.C.'s stumpage programs.

Department's Position: We disagree with respondents' contention that the Department inadvertently excluded by-products from the denominator of the subsidy calculations for the Forest Renewal program. The Department found in the *Final Determination* that under the Forest Renewal program the GBC provides benefits directly to softwood lumber producers. *See* the ''Forest Renewal B.C.'' section of the *Issues and Decisions Memorandum.* Accordingly, to calculate the benefit under this program, we divided the amount of benefits lumber producers received by B.C.'s f.o.b. value of total sales of softwood lumber for the POI. *Id.* Thus, our decision to use this denominator was intentional and does not constitute a ministerial error.

4. The Department Inadvertently Failed To Include the Prices and Volume for ''Other Merchantable'' Timber in the Eastern Washington United States Forestry Service (USFS) Data

Respondents allege that the Department, in creating species-specific prices for use as a benchmark, inadvertently failed to include prices and volumes for timber in the ''Other Merchantable'' category reported in the *Stumpage Price Report* for USFS sales in Eastern Washington. They claim this failure to include these prices resulted in a benchmark price that was overstated.

Petitioners disagree. They contend that there is no way to tell the proportion of species and prices associated with ''Other Merchantable'' timber and, thus, no way for the Department to use such data to make direct species or species group comparisons.

Department's Position: Respondents' allegation does not constitute a ministerial error. The Department deliberately excluded ''Other Merchantable'' timber in the *Stumpage Price Report* from consideration for our benchmark data because the record simply does not indicate with any degree of certainty which species are included in this category and because there is no evidence of the prices and volumes associated with particular species.

C. Ontario

1. Conversion of Michigan Volumes From Cords to MBF

Petitioners explain that the Department correctly converted from cords to MBF the pulplog volumes for purposes of calculating the benchmark prices. These volumes were taken from Michigan data sources. However, they argue that the Department improperly did not convert the corresponding prices for those data. They argue that the Department should convert the corresponding pulplog prices by dividing them by the same conversion factor that was used to convert the volumes.

Department's Position: We agree with petitioners. Therefore, we converted the pulplog prices that were used in the calculation of the benchmark prices from USD/cord to USD/MBF by dividing them by the same conversion factor that we used to convert the volumes.

2. Silviculture Overhead Calculation

Respondents argue that the Department erred in the calculation of the Ontario silviculture overhead reimbursement. In the *Final Determination*, we multiplied the total Forest Renewal Trust Fund disbursements during the POI—C$69,707,124.5—by ten percent, calculating that tenure holders were reimbursed 10 percent for silviculture overhead. Respondents argue that we should have calculated the overhead reimbursement according to the following formula: X = Total Silviculture Reimbursement – (Total Silviculture Reimbursement/1.1). Using this formula would result in an overall reimbursement amount of C$6,337,011.32 and an adjustment of C$0.45/m3.

Department's Position: We agree with respondents that a different formula should be used to calculate silviculture overhead reimbursement. Because Ontario tenure holders are reimbursed for 100 percent of eligible silvilculture costs plus an additional 10 percent for silviculture overhead, they are, in effect, reimbursed for 110 percent of their eligible silviculture costs. As such, to derive the 10 percent figure for silviculture overhead reimbursement, we have used the formula above, and derived a new figure for per unit silviculture overhead reimbursement of C$0.45/m3.

3. Total Silviculture Costs Calculation

Respondents argue that the Department should have adjusted for those total silviculture costs incurred by Ontario harvesters, but not reimbursed by the Crown. Respondents claim that in the ''Silviculture'' section for the Province of Ontario in the *Issues and Decision Memorandum,* we stated that we would make adjustments for silviculture costs actually incurred by Ontario harvesters. Respondents claim that Ontario tenure holders incurred an additional C$0.05 per m3 cost as a result of fulfilling Crown mandates that was not reimbursed by the Crown. Respondents argue that the Department should make this adjustment.

Department's Position: We disagree with respondents. We addressed this issue in the ''Silviculture'' section for the Province of Ontario in the *Issues and Decision Memorandum.* The Department's decision to reject this

adjustment was intentional and, thus, does not constitute a ministerial error within the meaning of section 351.224(f) of the Department's regulations.

4. Forest Management Planning Cost Adjustment

Respondents claim that in the *Issues and Decision Memorandum,* the Department stated its intention to make an adjustment for forest management planning costs actually incurred by harvesters, which they claim are C$0.32 per m3. In the final calculations, however, we made an adjustment of only C$0.16 per m3 for forest management planning costs. Respondents claim that this C$0.16 figure was mistakenly based on an estimate of in-kind revenue to the Crown for such expenses, rather than actual costs incurred by Ontario harvesters.

Department's Position: Respondents' allegation does not meet the standard for a ministerial error as defined by section § 351.224(f) of the Department's regulations; rather, the allegation challenges a methodological choice. As explained in the ''Forest Management and Planning'' section for the Province of Ontario in the *Issues and Decision Memorandum,* the Department made an upward adjustment of half of the reported forest management planning costs. Therefore, the Department is not addressing respondents' allegations on this matter.

5. Road Cost Adjustment

Respondents claim that we mistakenly adjusted for only half of secondary road construction costs, made no adjustments for tertiary road construction costs, and adjusted for only a portion of the road maintenance costs incurred by Ontario tenure holders. Respondents argue that the road cost data they placed on the record from Michigan and Minnesota was not used by the Department. They claim that the Department should have adjusted the actual road costs faced by Ontario harvesters *net* of the actual road costs incurred in Michigan and Minnesota.

Department's Position: We disagree with respondents. By adjusting for primary and secondary road construction costs, but not for tertiary costs we are adjusting for those road costs borne by Ontario tenure holders as a result of government obligations that purchasers of public stumpage in the benchmark states do not face. The decision to allow 50 percent of secondary road construction and maintenance was based on information contained in Ontario's questionnaire responses and based on information we discussed with GOO personnel at verification. *See* the ''Road Construction and Maintenance'' section for the Province of Ontario in the *Issues and Decision Memorandum.* The Department's decision to calculate the road cost adjustment in this manner was intentional and, thus, does not constitute a ministerial error within the meaning of section 351.224(f) of the Department's regulations.

D. Alberta, Manitoba, Ontario, and Saskatchewan

1. Use of General Conversion Factor, Rather Than Conversion Factor Derived From Information on Minnesota 2000 Corrected Public Stumpage Price Review and Price Index

Respondents argue that we should have used a conversion factor of 6.25 m3/MBF for the Minnesota stumpage price data based on information contained in the Minnesota 2000 Corrected Public Stumpage Price Review and Price Index (*Minnesota Price Index and Review*). Specifically, they argue that the report contains a conversion factor of 400 board feet per cord for softwoods on the cover. They further argue that because there are 2.5 m3 in a cord, a conversion factor of 400 board feet per cord will yield a m3/MBF conversion factor of 6.25 for softwood sawtimber and 2.5 m3/cord for pulpwood sawtimber.

Respondents acknowledge that the figure of 2.5 m3 in a cord has been challenged by petitioners, but note that petitioners have proposed using a figure of 2.41 m3/cord. *See* Dewey Ballantine, *Legal Memorandum Concerning the Countervailability of the Provincial Stumpage Programs and Subsidy Methodology* at 64 (February 14, 2002). Respondents argue that the choice between these two positions could be viewed as a policy decision, but failure to use one or the other, ''as the Department has done,'' is a ministerial error. *See* Weil, Gotshal, and Manges, *Ministerial Error Comments*, at 8 (April 8, 2002). They add that this information is published information prepared in the ordinary course of business by public agencies and, as such, should be used by the Department.

Petitioners argue that the choice of a conversion factor was heavily debated during the course of the investigation and that the Department's selection of a conversion factor was a methodological choice and, thus, cannot constitute a minesterial error. They further argue that the conversion factor advocated by respondents, (*e.g.,* the factor from the *Minnesota Price Index and Review*) is not appropriate because it was not used in actual transactions and because it is a conversion factor used with sawlogs and sawtimber.

Department's Position: We clearly stated the reasons for our selection of a conversion factor in the *Final Determination. See* the ''Conversion Factor'' section of the *Issues and Decision Memorandum.* Thus, respondents' allegations are methodological and do not identify a ministerial error.

E. Alberta and Saskatchewan

1. Composition of Species Groups in the Benchmark

In the *Final Determination,* Minnesota was used as a benchmark for Alberta, Saskatchewan and Manitoba. The species found in Minnesota were categorized to make direct comparisons to the species groups found in the respective Provinces. Eastern white pine, found in Minnesota, was included in the SPF category for Alberta and Saskatchewan, but excluded from the SP category in Manitoba.

Respondents argue that the Department made a ministerial error by including Eastern white pine in Minnesota's SPF category to compare with the SPF found in Saskatchewan and Alberta. They state that Eastern white pine is not found in either Province, referring to information previously submitted on the record.

Petitioners state that the Department consistently made comparisons between species that were not identical. They further argue that these comparisons constitute deliberate methodological decisions, which are not ministerial errors. Also, petitioners mention that Alberta did not provide the data necessary to make species specific calculations.

Department's Position: We agree with respondents. The methodology we employed, when possible, was to use species-specific comparisons, *see, e.g.,* the ''Comparability of U.S. Timber Stands'' section of the *Issues and Decision Memorandum.* This resulted in different ''species comparison baskets'' in each Province because of a different mix of species in each Province and U.S. benchmark state (*see* Calculation Memorandum.) For Alberta and Saskatchewan, we stated that we had constructed an SPF basket. However, white pine is not in the basket of species for which we were attempting to construct a benchmark using Minnesota data. Therefore, the inclusion of white pine in the SPF species mix for the Minnesota benchmark that was used for Alberta and Saskatchewan was inadvertent, and a ministerial error.

Accordingly, we have removed the white pine species from Minnesota's SPF mix for the benchmark used for Alberta and Saskatchewan.

F. Quebec

1. Weighting of Sawlog Prices

In the final calculations, the Department weighted stumpage prices for sawlogs per county in Maine using county-specific, sawlog volume data from the Maine Forest Service (MFS). Respondents allege that weighting stumpage prices for sawlogs in this manner seriously overstates the price of sawlogs in Maine because the volume data from the MFS includes other log types (*i.e.,* veneer, boltwood, studwood, and palletwood). Respondents argue that because the volume data from the MFS includes studwood, palletwood, and other wood categories under the heading ''sawlog,'' the Department must correct its weighting so that the price variable matches the weighting criteria. They assert that the Department can correct this error by incorporating prices for other log types into the country-specific sawlog prices.

Petitioners assert that respondents' allegations do not identify a ministerial error but rather address a methodological decision adopted by the Department in the *Final Determination.*

Department's Position: In the preliminary calculations, we stated that we used weighted-average stumpage prices to derive the benchmark price for each species in Maine. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada,* 66 FR 43186, 43200 (August 17, 2001)(*Preliminary Determination*). However, though stumpage prices in the MFS Stumpage Price Report are weighted by county, the county-wide prices included in the report are not weighted across all counties. Rather, those county-wide prices are simple averages of the prices in each county. As explained in the ''Choice of Maine as Source of Benchmark'' section for the Province of Quebec in the *Issues and Decision Memorandum,* we opted to move away from basing the benchmark stumpage prices on a simple average and, instead, chose to weight the prices using volume data, as reported by the MFS. Respondents contest the manner in which we used the volume data from the MFS. But, as we have explained, our decision to use the volume data from the MFS represented a methodological choice and not an inadvertent error. Therefore, we find that respondents' allegation on this point does not meet the standard of a ministerial error.

Countervailing Duty Order

As a result of our corrections, the estimated net countervailable subsidy rate attributable to certain softwood lumber products from Canada is as follows:

Producer/exporter	Original net subsidy rate	Amended net subsidy rate
All Producers/Exporters [3]	19.34 Percent *Ad Valorem.*	18.79 Percent *Ad Valorem.*

[3] Other than exempted or excluded products and/or companies.

On May 16, 2002, pursuant to section 705(d) of the Act, the International Trade Commission (ITC) notified the Department of its final determination that under section 705(b)(1)(A)(ii) of the Act the industry in the United States producing softwood lumber products is threatened with material injury by reason of imports of the subject merchandise from Canada.

In accordance with section 706(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, countervailing duties equal to the amount of the net countervailable subsidy determined to exist for all entries of softwood lumber products from Canada not explicitly exempted or excluded by the Department. In accordance with section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination.* In addition, section 706(b)(2) of the Act requires the refund of any cash deposits and release of any bonds of estimated countervailing duties posted since the Department's *Preliminary Determination* if the ITC's final determination is based on threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination,* section 706(b)(2) of the Act is applicable to this order. Therefore, the Department will direct the Customs Service to assess, upon further advice, countervailing duties on all unliquidated entries of softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of softwood lumber products from Canada entered or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct the Customs Service to refund any cash deposit made and release any bonds posted, between the publication date of the Department's *Preliminary Determination* and the publication of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, the Customs Service will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the amended net subsidy rate mentioned above. However, as indicated above, the Department exempted certain softwood lumber products from the Maritime Provinces from this investigation. This exemption, however, does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other province. Additionally, as explained above, the following companies are excluded from this order:

- Armand Duhamel et fils Inc.
- Bardeaux et Cedres.
- Beaubois Coaticook Inc.
- Busque & Laflamme Inc.
- Carrier & Begin Inc.
- Clermond Hamel.
- J.D. Irving, Ltd.
- Les Produits. Forestiers. D.G., Ltee.
- Marcel Lauzon Inc.
- Mobilier Rustique.
- Paul Vallee Inc.

- Rene Bernard, Inc.
- Roland Boulanger & Cite. Ltee.
- Scierie Alexandre Lemay.
- Scierie La Patrie, Inc.
- Scierie Tech, Inc.
- Wilfrid Paquet et fils, Ltee.
- B. Luken Logging Ltd.
- Frontier Lumber.
- Sault Forest Products Ltd.

Therefore, we will direct the U.S. Customs Service to exempt from the application of the order only entries of softwood lumber products from Canada which are accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau (MLB), and those of the excluded companies listed above. The MLB certificate will specifically state that the corresponding entries cover softwood lumber products produced in the Maritime Provinces from logs originating in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, and the state of Maine.

Pursuant to sections 705(a) and 706(a) of the Act, this notice constitutes the amended *Final Determination* and countervailing duty order with respect to certain softwood lumber products from Canada.

Notice of Review

Pursuant to section 751(a) of the Tariff Act of 1930, as amended, Canadian exporters of subject merchandise to the United States, subject to this order, may submit requests for expedited reviews for the purpose of establishing individual cash deposit rates within 30 days from the date of publication of this order. Each request must be accompanied by a completed application, which will be posted on IA's web site on the internet (*WWW.IA.ITA.DOC.GOV*). The eligibility criteria to request an expedited review of this order are included in the application form.

This order is published pursuant to section 706(a) of the Act and 19 CFR 351.211.

Dated: May 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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