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UNITED STATES – FINAL DUMPING DETERMINATION ON SOFTWOOD LUMBER FROM CANADA

WT/DS264

Answers of the United States to the Panel's 19 June 2003 Questions

June 30, 2003

United States - Final Dumping Determination on Softwood Lumber from Canada (DS264)

Questions to the Parties

1. The following responses of the United States answer the 19 June 2003 questions to the United States and to both parties. In several instances, the United States has also addressed questions posed by the Panel to Canada.

A. General issues

To the US:

> **5. In para. 36 of its *First Written Submission*, the US identifies one instance where, in the view of that party, Canada requested the Panel to engage in what effectively would be a *de novo* review of DOC's establishment and evaluation of the facts in this matter. In the view of the US, are there any other such instances? If so, please identify in detail.**

2. Paragraph 36 of the U.S. First Written Submission references paragraph 83 of Canada's First Written Submission. In that paragraph, Canada explained, as a general matter, what it believes the Panel must do to determine whether Commerce's evaluation of facts was unbiased and objective. First, since Canada made that statement as a general proposition within its "Standard of Review" discussion, it presumably frames the approach Canada would urge on each of the questions of fact presented in this case. Second, several specific instances in which Canada is asking the Panel to engage in *de novo* review are as follows:

3. Canada's presentation of a new regression analysis (Exhibit CDA-77) to support its contention that Commerce should have made a price adjustment to account for differences in the dimension of lumber in transactions compared amounts to a request for *de novo* fact finding. This exhibit was not before Commerce in the underlying investigation. At the June 17 Panel meeting, Canada stated that it intends to submit an expert's memorandum to explain the exhibit. The introduction of new evidence and a stated intention to introduce an expert's memorandum (which itself would be new evidence) to explain the new evidence demonstrates an improper attempt to have the Panel find facts as if it were the investigating authority.

4. In the case of Commerce's calculation of cost of production for Abitibi, Canada is asking the Panel to determine whether one method for allocating general and administrative ("G&A") costs is more reasonable and accurate than another. At paragraph 203 of its First Written

Submission, Canada asserts, without citation, that "DOC failed to evaluate Abitibi's circumstances and evidence before it so as to develop the most accurate and reasonable method for determining the financial expenses associated with the production and sale of softwood lumber." Inherent in Canada's statement is a plea for the Panel to weigh the evidence and find Abitibi's proposed method more "accurate and reasonable" than Commerce's. That is a request for *de novo* review.

5. Canada's claim regarding West Fraser's wood chip offset is another illustration. Commerce examined West Fraser's wood chip sales to affiliated entities and "tested" revenues from those sales against revenues from the company's own sales to unaffiliated entities. Canada complains about the "weight" Commerce attached to certain facts versus others.[1] Weighing facts is the responsibility of the investigating authority. In asking the Panel to re-weigh the facts, Canada is again asking for a *de novo* review.

6. A fourth example is Canada's claim regarding product under consideration. This is highlighted in paragraph 35 of Canada's Oral Statement at the June 17 Panel meeting. There, Canada states that the product under consideration "should have been limited to commodity dimension lumber." Effectively, Canada is asking the Panel to adopt its view of where the lines should have been drawn with respect to the product under consideration. That is a request for *de novo* review.

7. The foregoing list is illustrative rather than exhaustive. As stated at the beginning of this response, the United States understands Canada's overarching explanation of standard of review as a statement of how Canada would have the Panel look at each of the issues in dispute.

6. In footnote 166 to its *First Written Submission,* the US states:

> **"[t]he footnote attached to this assertion contains factual analysis never presented to Commerce during the administrative proceeding, in clear violation of Article 17.5(ii), and that information should not be considered by this Panel.[166]**
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> **[166]*See* Section III, *supra*. *See also, EC-Pipe Fittings Panel Report*, para. 7.33. However, even if this Panel considers this analysis, despite the U.S. contention that to do so would involve *de novo* review of the facts, the United States submits that it is inconclusive on its face. For example, a close examination of Canada's Exhibit CDA-76 reveals that while Weyerhaeuser's [[ ]], Slocan's comparable product (page 7) sold for an average price of [[ ]], a difference of [[ ]] percent above Slocan's average price. For Slocan, the average POI**

[1]*See* Canada's First Written Submission, para. 244.

price for [[ ]]. For Weyerhaeuser, the average POI price for [[ ]]. Both products commanded the same price within each company, yet the difference between companies in both cases was approximately [[ ]]. In addition, [[ ]] From an examination of the charts, it is apparent that there is no consistent pattern of prices that would require concluding that Commerce did not make an objective and unbiased evaluation of the facts."

Could the US please clarify its position regarding Exhibit CDA-76 in light of the above statement?

8. Footnote 166 of the U.S. First Written Submission appears in paragraph 137 and refers to the U.S. objection under Article 17.5(ii) to the new information presented by Canada in its Exhibit CDA-77 (the regression analysis). To clarify this point, the footnote makes reference to the charts contained in Canada's Exhibit CDA-76. These charts were also not presented to Commerce during the underlying proceeding, although the data upon which they are based apparently are derived from the respondents' submitted databases and do not involve the kind of manipulation of data presented by the new regression analysis contained in Canada's Exhibit CDA-77. Although the United States did not object to Canada's inclusion of the data and analysis contained in Exhibit CDA-76, the United States nonetheless believes that Canada's submission of these charts demonstrates that Canada is asking this Panel to re-weigh the evidence and conduct a *de novo* review of the facts.

To both parties:

7. Please comment on the findings contained in para. 7.3 of the *Egypt – Steel Rebar* panel report:

> **"the actions of an interested party during the course of an investigation are critical to its protection of its rights under the AD Agreement. As the Appellate Body observed in *US – Hot-Rolled Steel*, "in order to complete their investigations, investigating authorities are entitled to expect a very significant degree of effort to the best of their abilities from investigated exporters". The Appellate Body went on to state that "cooperation is indeed a two-way process involving joint effort". In the context of this two-way process of developing the information on which determinations ultimately are based, where an investigating authority has an obligation to "provide opportunities" to interested parties to present evidence and/or arguments on a given issue, and the interested parties themselves have made no effort during the investigation to present such evidence and/or arguments, there may be no factual basis in the record on which a panel could judge whether or not an "opportunity" either was not "provided" or**

> **was denied. Similarly, where a given point is left by the AD Agreement to the judgement and discretion of the investigating authority to resolve on the basis of the record before it, and where opportunities have been provided by the authority for interested parties to submit into the record information and arguments on that point, the decision by an interested party not to make such submissions is its own responsibility, and not that of the investigating authority, and cannot later be reversed by a WTO dispute settlement panel." (footnotes excluded)**

9. The quoted passage involves the *Egypt – Steel Rebar* panel's analysis of the respective responsibilities of the investigating authority and the interested parties in an antidumping investigation. Specifically, it relates to those instances in which the AD Agreement imposes certain procedural obligations on the investigating authority, but "leaves to the discretion of the investigating authority exactly how they will be performed."[2] This discussion is particularly relevant to Commerce's application of certain cost calculation methodologies challenged by Canada, as well as Canada's claim for a price adjustment for differences in the dimension of the softwood lumber products compared. With respect to each of these calculations, the action taken by Commerce falls within the discretion afforded by the AD Agreement, and Canada's claims are without merit.

10. This statement by the *Rebar* panel highlights the responsibility, in the first instance, for an interested party to submit any relevant information on the record to be considered by an investigating authority. With respect to differences in dimension, Article 2.4 states that a due allowance will be provided "in each case, on its merits," and when differences are "demonstrated" to affect price comparability. Whether a factor has been demonstrated to affect price comparability is a matter for "the judgement and discretion of the investigating authority to resolve on the basis of the record before it."[3] In this case, Commerce provided interested parties with ample opportunity to provide relevant information on the record with respect to any claimed price adjustments for differences in dimension. The questionnaire informed the interested parties of the requirements to establish an adjustment for differences in merchandise;[4] a September 14,

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[2] *Egypt– Steel Rebar Panel Report*, para. 7.2.

[3] *Id.* at para. 7.3.

[4] *See* Letter to Abitibi enclosing Questionnaire (May 25, 2001) at B-29 (requesting variable cost of manufacturing information for all sales of similar, rather than identical products, *i.e.*, if there are differences in physical characteristics) and at I-5 (defining and describing the adjustment for differences in physical differences) (Exhibit US-36). The Questionnaire also refers interested parties to Commerce's regulations on this issue, which were also provided in the U.S. First Written Submission in Exhibit US-44.

2001 letter from Commerce informed the parties that Commerce would consider matching similar, not just identical, softwood lumber products;[5] both identical and similar softwood lumber products were matched in the November 6, 2001 Preliminary Determination,[6] after which there was still opportunity for comment and the submission of new factual information.[7] In spite of these opportunities, the Canadian respondent companies' requests for a price adjustment remained unsubstantiated. Therefore, Canada's complaint on this issue, particularly its efforts now to submit new evidence in the form of a regression analysis (Exhibit CDA-77), should be rejected. As the *Egypt – Steel Rebar* panel concluded: "[W]here opportunities have been provided by the authority for interested parties to submit into the record information and arguments on that point, the decision by an interested party not to make such submissions is its own responsibility, and not that of the investigating authority, and cannot later be reversed by a WTO dispute settlement panel."[8]

11. There are at least two other examples in Canada's claims where the interested party in the underlying investigation failed to make submissions or to present evidence or arguments. First, contrary to Canada's argument here, West Fraser never raised the claim that its unaffiliated sales in British Columbia were "too small" to be a valid basis for assessing the market value of affiliated transactions, nor did it present evidence or argument to that effect.[9] Second, again contrary to Canada's argument here, Slocan never requested that its futures profits be used as an adjustment to anything other than a direct selling expense or an interest expense.[10] In both cases,

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[5] *See* Letter to Abitibi Consolidated Inc. (Sept. 14, 2001) (Exhibit CDA-75).

[6] *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 Fed. Reg. 56,062 (Nov. 6, 2001) ("*Preliminary Determination*") (Exhibit CDA-11); *see also* Final Determination, Comment 7 (Exhibit CDA-2).

[7] *See* Commerce's regulations, 19 C.F.R. § 301(b)(1)(providing that new information may be submitted in investigation until seven days prior to date of commencement of verification) (Exhibit US-65). Verifications normally take place after the Preliminary Determination in investigations, as they did in the *softwood lumber investigation*.

[8] Panel Report, *Egypt – Steel Rebar*, para. 7.3 (footnote omitted).

[9] Under U.S. procedures, parties are provided a final opportunity to present all relevant issues that remain in dispute. See 19 C.F.R. § 351.309(c)(2) (Exhibit US-69). West Fraser never raised a single point regarding the quantity of these unaffiliated sales in British Columbia. *See* West Fraser's Case Brief of February 12, 2002, at 46-48 (Exhibit US-55); West Fraser's Rebuttal Brief of February 19, 2002, at 19-21(Exhibit US-54).

[10] Slocan only requested two alternative treatments for the amount corresponding to these profits, and contradictory ones at that. If there was a third way to treat them – as indirect selling expenses – that claim was never made. In its July 23, 2001 Questionnaire Response, Slocan unambiguously stated that the hedging profits should be treated as an offset to direct selling expenses in the U.S. market, as an adjustment for differences in the conditions and terms of sale. Response of Slocan Forest Products Ltd To Sections B, C, & D of the Department of Commerce Antidumping Questionnaire, July 23, 2001, pp. C35-37 (Exhibit US-71). In the same submission, Slocan

the Canadian companies failed to meet their obligations to raise any relevant issues and adequately prove their claims.

B. ARTICLES 5.2/5.3

To the US:

> **12. Please indicate whether the relationship between IP and Weldwood was disclosed by the applicants in the Application, and if so, whether this fact was discussed and considered by the DOC in the context of the initiation of the investigation.**

12. The industry support section of the application addressed the question of quantifying the portion of the U.S. industry that chose not to support the application because of their own affiliations with Canadian producers. In Petition Exhibit IB-7, the applicants provided a Canadian newspaper article on this issue in which Weldwood is mentioned as "owned by International Paper."[11] In its initiation decision, however, Commerce did not discuss the Weldwood-IP relationship, because it was not relevant to either the industry support question or the sufficiency of the evidence presented in the application as to prices and costs.

13. Article 5.2 of the AD Agreement requires the application to list known domestic producers of the product under consideration and known exporters or foreign producers. The application included Weldwood in the list of Canadian producers/exporters.[12] Article 5 does not require the investigating authority to discuss and consider relationships between companies whose data are not necessary for a finding of "sufficient evidence to justify the initiation of an investigation."

> **13. In para. 66 of its *First Written Submission,* the US states:**
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> **"[t]he product under consideration was a commodity-type product for which industry-wide data were likely to provide a more reliable representation than company-specific data for a single company responsible for only a small fraction of the Canadian exports to the United States."**

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unambiguously asserted that it did not incur indirect selling expenses. *Id.* at p. C-37 (Exhibit US-71).

[11] *See* Exhibit US-62.

[12] *See* Petition Exhibit IB-9 (Exhibit US-63).

Bearing the above statement in mind, did DOC have industry-wide data on cost of production, home market sales and export prices before it at the time of initiation? If not, did DOC gather that information when examining whether the requirements of Article 5.3 were met?

14. The application contained data on cost of production, home market sales, and export price for many companies in the two largest lumber-producing provinces in Canada: British Columbia in western Canada and Quebec in eastern Canada. Thus, the application data were representative of the Canadian industry.[13] Commerce did not gather additional, nationwide data when examining whether the requirements of Article 5.3 were met, because the information provided in the application was sufficient to initiate an antidumping investigation.

14. The Panel notes the following statement made by Canada in para. 17 of its *First Oral Statement:*

> **"[m]embers of the Petitioner buy lumber from Canadian companies to fill out their product lines daily. They do regular business with Canadian companies, which results in thousands of transactions and billions of dollars worth of cross-border trade. All of these facts were known by Commerce. Accordingly, it is inconceivable that the application was accepted without information on a single actual transaction involving a sale of softwood lumber either in Canada or the United States. The application did not contain transaction-specific evidence identifying a single Canadian exporter or providing any specific examples of price or cost. The Petitioner's claim that such information was not "reasonably available" is simply not credible and should never have been accepted by Commerce." (footnotes omitted)**

In light of the substantial cross-border trade in lumber products between Canada and the US (as stated by Canada in the above citation), was not information on export price from Canadian producers and exporters reasonably available to the applicant?

15. Information on export prices was reasonably available to the applicant and was provided in the application.[14] Because the export prices that were provided in the application (including

[13]*See* U.S. First Written Submission at paras. 52-62 and sources cited therein, which detail the diverse sources of data in each of these three categories.

[14]*See* exhibits cited at paras. 57-61 of the U.S. First Written Submission.

the full period of investigation *Random Lengths* export price information for both Eastern and Western S-P-F, the affidavit on lost sales and the price quotation affidavit) were sufficient for initiation, no further export price information was necessary. Commerce, therefore, made no determination, during the initiation process or the subsequent investigation, as to whether *still more* information on export prices from Canadian producers and exporters was *also* reasonably available to the applicant. The AD Agreement does not require such determinations in these circumstances.

16. Paragraph 17 of Canada's First Oral Statement, moreover, significantly distorts the facts. It is not accurate that "the application was accepted without information on a single actual transaction involving a sale of softwood lumber either in Canada or the United States." As demonstrated by the record and detailed in our First Written Submission at paragraphs 48-64, the application contained extensive evidence on actual sales of softwood lumber in both Canada and the United States from *Random Lengths* and from affidavits. The claim in paragraph 17 of Canada's First Oral Statement that "[t]he application did not contain transaction-specific evidence identifying a single Canadian exporter or providing any specific examples of price or cost" is true only in the sense that the Canadian producers associated with the specific transactions underlying the data in the application were not named; that does not make the evidence any less "transaction-specific."

15. Please comment on the statement contained in para. 23 of Canada's *First Oral Statement*:

> **"it was demonstrated that the Random Lengths data contained in the application commingled Canadian and US producer prices, and, thus, were not representative of Canadian sale prices."**

17. This statement is incorrect. Canada's First Oral Statement, at paragraph 23, refers, in turn, to Canada's First Written Submission. The only "demonstration" to be found in that submission regarding the alleged commingling of *Random Lengths* data are statements in paragraphs 91 and 104. At paragraph 91, Canada misleadingly suggests that the *applicant* (the Coalition for Fair Lumber Imports Executive Committee) characterized the *Random Lengths* data as commingled: "According to the Executive Committee, the following information [was] relied upon by DOC to initiate the investigation . . . (1) *Random Lengths* pricing data for Eastern Spruce-Pine-Fir that commingled both Canadian and non-Canadian producer prices . . . ." This and other misleading statements in paragraph 91 are indiscriminately "supported" by a lengthy citation in footnote 87 of various exhibits in the application, most of which have no bearing on the "commingled data" allegation. Canada repeats the claim, absent even the limitation to Eastern S-P-F, at paragraph 104 of its First Written Submission: "The *Random Lengths* pricing data commingled both Canadian and non-Canadian producer prices." Once again, that claim and

others are "supported" only by an indiscriminate citation of exhibits, none of which "demonstrates" that the *Random Lengths* data relied upon in the application "commingles" Canadian and U.S. sales.

18. The United States, in its own First Written Submission, and in response to the Panel's questions during the first Panel meeting, clarified the facts. As an initial matter, the "*Random Lengths* pricing data" contained in the application comprises three different groups of data used to demonstrate the existence of dumping of softwood lumber by Canadian exporters and producers.

19. First, at paragraph 52 of its First Written Submission, the United States discussed the use of *Random Lengths* pricing data for *Eastern* S-P-F "delivered to Toronto" as a source of Canadian home market softwood lumber prices used to demonstrate the existence of below-cost sales in the Canadian market. In footnote 46, the United States explained that "[a]lthough Canada has claimed that these prices, 'commingle', U.S. and Canadian data, the publishers of *Random Lengths* have expressly stated that the prices in the "Toronto delivery" column are based *exclusively* on production from mills in Canada." As authority for this, the United States referenced an April 19, 2001 letter from *Random Lengths* to this effect, which was placed on the record in an applicant's submission of April 20, 2001.[15]

20. Second, at paragraph 58 of its First Written Submission, the United States discussed the use of *Random Lengths* pricing data for *Western* S-P-F delivered to the Chicago and Atlanta markets as a source of export prices used to demonstrate below-cost (*i.e.*, "dumped") sales to the U.S. market. In footnote 58, the United States noted that "*Random Lengths* defines '*Western* S-P-F' as 'Lumber of the Spruce-Pine-Fir group produced in British Columbia or Alberta.'"[16]

21. Third, at paragraph 61 of its First Written Submission, the United States discussed the use of *Random Lengths* pricing data for *Eastern* S-P-F delivered to Boston and the Great Lakes region as an additional source of export prices used to demonstrate below-cost (*i.e.*, "dumped") sales to the U.S. market. Canada's "commingling" claim with respect to this data group is based

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[15] We note that Exhibit US-1 mistakenly included a different submission made by the applicant on that same date. The *Random Lengths* letter regarding Toronto delivery was submitted on the public record of the investigation and is attached as a new exhibit to these responses to the Panel's questions. *See* Fiche 22, Frame 80 (Exhibit US-60).

[16] The cited authority for this is Petition Exhibit III.9 (relevant excerpts from the *Random Lengths* publication "Terms of the Trade") (previously submitted in this dispute as Exhibit US-17). The relevant page from "Terms of the Trade" was inadvertently omitted from Exhibit US-17. A complete version of Petition Exhibit III.9 is attached as Exhibit US-61; the definition of Western S-P-F is at page 370 of that publication.

on the "Terms of the Trade" definition of "Eastern S-P-F": "Lumber of the Spruce-Pine Fir group produced in the eastern provinces of Canada, including Saskatchewan and Manitoba. Also used in reference to some lumber produced in the northeastern United States."[17]

22. This definition itself reflects the fact that the *primary* meaning of this term is limited to certain Canadian-produced lumber. Its use as a "term of the trade" in connection with U.S.-produced lumber is not only secondary, but also separate. In footnote 67 of its First Written Submission, the United States explained that a reasonable reading of statements by *Random Lengths*' publisher on the record demonstrated that Canada's claim lacked merit. As authority for this, the United States referenced an April 19, 2001 letter from *Random Lengths* which had been placed on the record of the case in a submission made by the applicant on April 20, 2001.[18] That letter states, among other things, that the Eastern S-P-F prices reported in *Random Lengths* "are representative of lumber produced in the Eastern Canadian provinces." With respect to this species group, the publisher of *Random Lengths* states that, although his publication "receives" information on S-P-F from mills in New England, "current grading rules" require the New England product to be designated as S-P-F-S (for "south"), whereas "we focus our information gathering and price reporting on Eastern S-P-F coming out of Eastern Canada."

23. This combination of evidence shows that *Random Lengths* recognizes a market distinction between Canadian-produced and U.S.-produced S-P-F and does not commingle data on the Canadian-produced "Eastern S-P-F" with data on U.S.-produced (Eastern) "S-P-F-south" lumber.

24. Further, other export price data in the application, such as the *Random Lengths* Western S-P-F data discussed at paragraph 58 of the U.S. First Written Submission, would have been independently sufficient to justify initiation.

To both parties:

16. In the view of Canada/the US, which obligation(s) are imposed by Article 5.2? Which entity or entities is/are the addressee(s) of the obligation(s)?

25. Article 5.2 does not impose an obligation on investigating authorities. It describes the contents of an application.

[17] *See* Petition Exhibit III-9, at p. 114 (Exhibit US-1; Exhibit US-61).

[18] As explained above, Exhibit US-1 mistakenly included a different submission made by the applicant on the same date, and the United States is now providing the correct record document to the Panel as Exhibit US-60. The *Random Lengths* letter in question is at Fiche 22, Frame 79.

26. Canada's argument regarding Article 5.2 rests on the flawed premise that Article 5.2 must be read as imposing a stand-alone obligation, independent of the obligation under Article 5.3. This is not what Article 5.2 does at all. Article 5.2 is a description of the contents of an application. It provides context for an investigating authority's obligation under Article 5.3 to determine whether there is sufficient evidence to initiate an investigation.

27. The proposition that Article 5.2 does not impose a stand-alone obligation on investigating authorities is not nearly as unusual as Canada suggests.[19] Elsewhere in the WTO Agreements, one finds provisions that do not themselves impose obligations but that provide context for obligations set forth elsewhere. An example is Article III:1 of the GATT 1994. Article III:1 states that certain laws, regulations and requirements "should not be applied to imported or domestic products so as to afford protection to domestic production." In *Japan–Alcoholic Beverages*, the Appellate Body explained that the Panel in that case had correctly found "a distinction between Article III:1, which 'contains general principles', and Article III:2, which 'provides for specific obligations regarding internal taxes and internal charges.'"[20] A similar relationship exists in this case between AD Agreement Article 5.2 and Article 5.3.

28. Another example of an agreement provision that does not impose an obligation but provides context for obligations found elsewhere is Article 4.1 of the Agreement on Agriculture, which provides

> Market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.

29. In *EC–Bananas*, the EC argued that Article 4.1 is a substantive provision, which, read in the context of Article 21.1 of the Agreement on Agriculture (providing that the provisions of the GATT 1994 "shall apply subject to the provisions of this Agreement"), demonstrates that Schedules of concessions supercede the requirements of Article XIII of the GATT 1994.[21] Accordingly, the EC contended that the tariff rate quotas provided for in its Schedule would not be subject to Article XIII.[22] The Appellate Body disagreed, concluding that "Article 4.1 does no

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[19] *See* Canada's First Oral Statement, para. 10.

[20] Appellate Body Report, *Japan–Taxes on Alcoholic Beverages*, WT/DS8, 10, 11/AB/R, adopted Nov. 1, 1996, pp. 17-18.

[21] Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, adopted 25 September 1997, WT/DS27/AB/R, para. 20.

[22] *Id.*

more than merely indicate where market access concessions and commitments for agricultural products are to be found."[23]

30. The Appellate Body's interpretation of Article 4.1 of the Agreement on Agriculture illustrates the fact that sometimes an agreement provision may serve a limited purpose, and that obligations should not be extracted from a provision unless the language explicitly supports that interpretation. Article 5.2 of the AD Agreement serves just such a limited purpose—describing the contents of an application. Where paragraphs in Article 5 impose obligations on investigating authorities, they refer explicitly to what "the authorities" shall or shall not do. This is the case, for example, in Articles 5.3, 5.4, 5.5, 5.6, and 5.8. There is no such reference in Article 5.2. The Panel should reject Canada's attempt to read an obligation into Article 5.2 that is not there.

17. In the view of the Parties, is there a hierarchy in which the applicant should endeavor to submit the information, as is reasonably available to it, required under Article 5.2(iii)? Please motivate your response fully.

31. Article 5.2(iii) gives three alternative bases for identifying normal value: (1) information on home market prices, or "where appropriate," (2) information on prices for sales to a third country or countries, or (3) information on the constructed value of the product. Article 5.2 (iii) also gives two alternative bases for identifying export price: (1) information on export prices, or "where appropriate," (2) information on "the prices at which the product is first resold to an independent buyer in the territory of the importing Member" (*i.e.*, "constructed export prices").

32. The alternatives described in Article 5.2(iii) are not interchangeable. With respect to identifying normal value, for example, home market prices in the ordinary course of trade are normally preferable to the other two categories. However, if there are not sufficient sales in the home market for the home market to provide a viable basis of comparison, or if the home market sales database does not offer, because of significant volumes of below-cost sales, a reliable indication of sales made in the ordinary course of trade, it is "appropriate" to use sales in third country markets or constructed value, respectively, even if there are some home market prices on the record. In other words, the "appropriateness" of using the later-listed alternatives depends not upon the absence of data corresponding to the first-listed alternative, but upon other circumstances. The application in this case, for example, began the process of identifying normal value by looking to Canadian home market prices. Because the applicants demonstrated widespread sales below cost in the Canadian market, however, they properly relied upon

[23] *Id*. at para. 156.

constructed value as the basis for comparison to export price for purposes of providing evidence of dumping sufficient for initiation of the investigation.

33. It may be that the Panel's question has to do with another sort of "hierarchy on which the applicant should endeavor to submit information." Canada claims that if company-specific sales and cost data for Weldwood were reasonably available to the applicants, then the applicants were required to base their application on these data. But this claim implies that Article 5.2 imposes a data hierarchy, in which data specific to a named company are deemed superior to other types of data, and that, if data in this allegedly higher category are available, alternative types of data may not be used to demonstrate dumping in an application. Article 5.2 contains no such obligation. There is no hierarchy of the types of information an applicant should endeavor to submit to show dumping sufficient to initiate an investigation. As explained at the first Panel meeting, in this case, because of the large number of softwood lumber producers in Canada, the United States believes that the aggregate data submitted in the application provided a relevant, broad picture of pricing practices of the industry.

E. ALLOWANCE FOR DIFFERENCES IN DIMENSIONS

To the US:

> **25. Please explain in detail how DOC carried out the product comparison in case of non-identical CONNUMs. Of the total number of comparisons made, how many were based on identical CONNUMs?**

34. To carry out the product comparison, Commerce first identified the matching characteristics in order of importance, as suggested by the interested parties.[24] These characteristics, from most to least important were: (1) product category (*e.g.*, dimensional lumber, timbers, boards); (2) species (*e.g.*, SPF, Western Red Cedar), (3) grade group, (4) grade, (5) moisture content, (6) thickness, (7) width, (8) length, (9) surface finish, (10) end trimming, and (11) further processing (*e.g.*, edged, drilled, notched).[25] With the exception of grade group, these characteristics were included in the questionnaire. Grade group was added for the Final Determination based on suggestions received from the parties in response to Commerce's August 9, 2001 request for suggestions regarding a model matching hierarchy.[26]

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[24] While Commerce accepted the suggestions of the parties in this regard, this acceptance was not dependent upon a demonstration of effect on price comparability.

[25] *See, e.g.,* April 25, 2002 Amended Final Margin computer program for Weyerhaeuser Corporation at line 2808-2809 (Exhibit US-66).

[26] Final Determination, Comment 7 (Exhibit CDA-2).

35. At the suggestion of the parties, Commerce did not match across product category, species or grade group. Therefore, all matches are identical with respect to those characteristics. Commerce first compared the control numbers of the U.S. products to those of the home market products to determine if an identical match was available. If an identical match for all characteristics was not available, Commerce's matching methodology found the *most similar* match. Commerce's computer program accomplished this by finding the most similar match for each characteristic based on its order of importance. For example, it tried to find a product of the identical grade regardless of the less important characteristics. If there were multiple sales of the identical grade, it tried to find a product where grade and moisture content were identical and so on, keeping as many of the characteristics identical to the U.S. sale product as possible, until it found the most similar match. If there were no sales of the identical grade, it found the product with the most similar grade. If there were multiple sales of the most similar grade, it tried to find a sale with the identical moisture content, and continued in this fashion along the hierarchy of characteristics until it found the most similar match.

36. To achieve the most appropriate similar match, each identified trait *within* each model characteristic was assigned a numeric value.[27] For example, with regard to moisture content, dry lumber was assigned a value of one, kiln-wet lumber was assigned a value of three and green lumber was assigned a value of four. When determining a proper similar match, the program looked at the difference between the number assigned for each characteristic of the U.S. product and those of the possible matches. In the case of moisture content, if no product with the identical moisture content was available, the computer would have chosen to match U.S. sales of green lumber to sales of kiln-wet lumber (4-3 = 1), the most similar comparison available. Only if no possible match to kiln-wet lumber was available, would it have matched to sales of dry lumber (4-1 = 3).[28]

37. Commerce took additional steps to further refine its matching methodology by using available cost data. When matching similar, rather than identical, grade or further processing characteristics, if two equally similar matches were available, the computer chose the match with the smallest variable cost difference. With regard to all three dimensional characteristics, because there was no cost difference, when two equally similar matches were available, both matches were selected and their normal values averaged. For example, the U.S. price of an 8' board would be compared to the weighted average normal value of a 6' and a 10' board, which were identical in every other respect.[29]

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[27] *See* the April 25, 2002 Amended Final computer program for Weyerhaeuser Corporation, at lines 3220-3362, assigning numeric values to each trait within each characteristic (Exhibit US-66).

[28] *See id.* at lines 3306-3308.

[29] Final Determination, Comment 7 (Exhibit CDA-2).

38. At a further suggestion of the Canadian parties, length was classified into the following length bands: less than 16'; 16' - less than 22'; 22' and above.[30] Commerce first attempted to match within each length band, and matched across length bands only when a similar match was not available within the band. In order to accomplish this, Commerce assigned lengths in the less than 16' category numerical values ranging from 100-105, the 16' - 22' category was assigned numbers ranging from 200-202 and the over 22' category was assigned numbers over 300. Sales composed of various lengths (random lengths) where the respondent was unable to separate the sale into its component lengths, were assigned a code of 999.[31] Therefore, if no identical length piece was available, a 14' piece of softwood lumber would match to a 10' piece of lumber before matching to a 16' piece of lumber.

39. Width and thickness were assigned sequential numbers based on ascending size. The computer matched to the product with the smallest difference in numeric value (*i.e.*, the closest number) first. One company, Weyerhaeuser, made sales of random widths and thicknesses and these were assigned a numeric value of 999.[32]

40. Identical matches account for **[[ ]]** percent of all matches of export sales by volume. Similar matches account for **[[ ]]** percent and constructed value accounts for **[[ ]]** percent.[33]

26. In the view of the Parties, does Article 2.4 impose (or disallow) the use of any specific methodology in order to determine the amount of an allowance for differences in physical characteristics?

41. Article 2.4 does not impose or disallow any specific methodology regarding the determination of the amount for a due allowance for differences in physical characteristics. It requires a showing or demonstration, "in each case, on its merits," that there is an effect on price

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[30] *Id.*

[31] See Exhibit US-66 at lines 3310-3321.

[32] *See id.* at lines 3323-3336 (thickness) and 3338-3351 (width).

[33] *See* Exhibit US-68 (which summarizes the data) and Exhibit US-67 (which provides the computer output from the record for each company from which the data was obtained). Commerce has used volume (thousand board feet) in response to the Panel's question because the dumping margins were weighted by volume of export sales. Accordingly, only volume provides a meaningful indication of the relative "number of comparisons" based on identical matches. Based on number of comparisons, the identical matches accounted for **[[ ]]** percent of all export sales, similar matches accounted for **[[ ]]** percent, and constructed value for **[[ ]]** percent. *See* Exhibit US-70.

comparability of the difference in physical characteristics before a due allowance is made. However, the provision does not address: (a) how an investigating authority will *identify whether* there is an effect on price comparability, nor (b) how to *measure* the allowance due once that identification has been made.

> **27. Article 2.4 provides that: "[d]ue allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in (...) physical characteristics." Could the text be interpreted to suggest that once differences in physical characteristics have been found, price comparability is automatically affected, or is there still a requirement that the effect on price comparability must be shown in addition?**

42. The text of Article 2.4 does not require an automatic adjustment based on the mere existence of physical differences. Such an interpretation would render the terms "in each case, on its merits" and "demonstrate" meaningless. These terms plainly require a case-by-case analysis to determine whether the facts support any allowance for differences in physical characteristics due to an effect on price comparability.

43. Differences in physical characteristics are not necessarily reflected in differences in the expenses or costs of the producer, nor are they necessarily reflected in the price to the customer. For example, a toy manufacturer may sell a series of toy trucks. Each toy truck may have different working parts, and differ significantly in physical appearance and even toy function - one is a fire truck, the other a dump truck, another a garbage collection truck. Yet all of these toys may have the same costs of production, and may normally be sold for the same price. Therefore, a due allowance, or appropriate adjustment, for differences in physical characteristics would not be warranted *per se*, on the basis of physical differences. Additional evidence would have to be presented to substantiate the due allowance or appropriate adjustment. In order to give the relevant terms of Article 2.4, particularly "in each case, on it merits" and "demonstrate," their ordinary meaning, the investigating authority must first determine, based on record information, that differences in physical characteristics affect price comparability, before making an adjustment.

44. The sentence from Article 2.4 quoted in the Panel's question concludes with the phrase "and any other differences which are also demonstrated to affect price comparability." The use of the term "also demonstrated" confirms the need for a demonstration that the physical differences at issue affect price comparability. We note the panel's statement in *Egypt – Steel Rebar,* in considering a due allowance for imputed credit expenses (which results from a condition or term of sale) that "[i]n short, *where it is demonstrated* by one or another party in a particular case, or by the data itself that a given difference affects price comparability, an

adjustment must be made."[34] The Canadian respondents in this case did not demonstrate the effect on price comparability of differences in dimension.

F. ZEROING

To the US:

32. Could the US indicate which methodology was used by DOC when comparing normal value to export price in the investigation at issue?

45. In this investigation, the United States made comparisons between normal value and export price using the weighted average to weighted average comparison methodology consistent with Article 2.4.2 of the AD Agreement. We note that in certain cases normal value was based on constructed value.

33. In para. 31 of the EC' *Third Party Submission*, it is stated that:

> **"[t]he European Communities considers that the US methodology for determining the numerator for the purposes of the weighted average margin calculation in no way differs from the EC "zeroing" methodology already found to be incompatible with Articles 2.4 and 2.4.2 of the *Anti-Dumping Agreement* in *European Communities – Bedlinen*."**

Does the US agree with the above proposition?

46. The United States does not have access to the computer program and detailed calculation methodologies utilized by the EC in the *EC–Bed Linen* case. Consequently, the United States is not in a position to assess whether the methodology utilized by the United States in this investigation "in no way differs" from that utilized by the EC.

34. Please comment on paras. 8-10 of Japan's *First Oral Statement.*

47. To fully address the statements made in these paragraphs, it is necessary to include a discussion of paragraph 7, which sets up the basis for Japan's arguments in the subsequent paragraphs.

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[34] Panel Report, *Egypt – Steel Rebar*, para. 7.352.

48. In paragraph 7 of its First Oral Statement, Japan mis-characterizes the U.S. argument. The United States does not suggest that Article 2.4.2 provides "for calculation of the margin of dumping *only* on a model-specific basis";[35] rather, the United States argues that model-specific, level-of-trade-specific comparisons are permitted under Article 2.4.2. In fact, two of the three methodologies in Article 2.4.2 provide for the calculation of transaction-specific margins of dumping. The third methodology (weighted average to weighted average comparisons) refers to a comparison with "all comparable export transactions." Interpreting this phrase consistently with Article 2.4, an investigating authority may calculate multiple margins of dumping.

49. Also in paragraph 7, Japan mis-quotes Article 2.4.2 of the AD Agreement. The word "margin" – singular – does not appear in Article 2.4.2. Only the plural – "margins" – appears in that provision.

50. In paragraph 8 of Japan's First Oral Statement, Japan essentially makes the same point that the United States made in paragraph 154 of its First Written Submission (albeit relying on a different provision of the AD Agreement): that it is necessary to calculate an overall dumping margin for investigated companies. While Japan referenced Article 6.10 and the United States referenced Article 5.8, in either case, the need for an overall dumping margin is based on obligations separate from those found in Article 2.4.2. Moreover, Article 2.4.2 of the AD Agreement does not specify the methodology to be used to aggregate the "margins of dumping" into an overall dumping margin.

51. In paragraph 9, Japan appears to agree with much of the U.S. position with respect to Article 2.4.2. Although Japan suggests that multiple comparisons may occur under Article 2.4.2 as a matter of "administrative convenience," Japan also recognizes that such multiple comparisons may be appropriate to take into account (among other things) differences in physical characteristics among several models of the product under consideration. Japan recognizes that this step, which occurs pursuant to Article 2.4.2, is "in the middle of the entire process to calculate an individual margin of dumping for an exporter/producer." Moreover, Japan appears to recognize that Article 2.4.2 itself does not establish any obligation as to how the margins of dumping are aggregated. In any event, no additional comparison occurs when an authority aggregates "all of these intermediate margins obtained from multiple comparisons." Therefore, Article 2.4.2, which addresses comparisons only, does not speak to this process of aggregating margins.

52. In paragraph 9, Japan suggests that the legal basis for offsetting dumping margins with non-dumping amounts is the principle of good faith. Pursuant to this Panel's terms of reference

[35]Japan First Oral Statement, para. 7 (emphasis added).

and Articles 3.2, 7, and 19.2 of the DSU, this Panel's task is to review the consistency of the U.S. antidumping duty determination with the Antidumping Agreement. Any review of the United States' so-called "good faith" beyond the relevant provisions of the Antidumping Agreement is outside the scope of WTO dispute settlement.

53. Also in paragraph 9, Japan uses the term "negative margins." Article 2.1 of the AD Agreement provides that dumping occurs when a product is sold at less than its normal value. When a proper comparison is made pursuant to the terms of Article 2.4.2 and the weighted average export price is greater than the weighted average normal value, the transactions in question were not dumped. The AD Agreement does not recognize "negative margins," and Japan cites no authority for this concept.

54. In paragraph 10, Japan mis-characterizes the position of the United States with respect to the issue of comparability. The determination of the scope of the product under consideration is distinct from the determination of price comparability between weighted-average export transactions and weighted-average normal values under Article 2.4.2. Japan incorrectly suggests that the United States argued that not all softwood lumber was comparable for purposes of Article 2.4.2. As the United States discussed in paragraphs 162 and 163 of its First Written Submission, sales of all models at all levels of trade are not *equally* comparable. For example, if there is a home market sale of an identical model at the same level of trade, the United States would use that as the comparison (comparing the weighed average normal value to the weighted average of all comparable (in this case, identical, same level of trade) export transactions). Identical models sold at different levels of trade and non-identical models are nonetheless still "able to be compared." However, their differences in physical characteristics and level of trade would make them less comparable and, when those differences affected price comparability, it would be appropriate to make due allowance for the differences, pursuant to Article 2.4. Distinguishing among models and levels of trade is permissible under Article 2.4.2 (as Japan seems to recognize in paragraph 9 of its First Oral Statement), but does not require that the United States consider each model and level of trade to constitute a distinct "product under consideration" for purposes of the AD Agreement.

35. Please comment on para. 20 of EC's *First Oral Statement*.

55. Much of what the EC states in this paragraph re-asserts the conclusion drawn in the *EC – Bed Linen* case, and is premised on the reasoning of the Appellate Body in that case. In its First Written Submission[36] and in its Opening and Closing Statements at the first Panel meeting,[37] the

[36] *See* U.S. First Written Submission, paras. 173-78.
[37] *See* Opening Statement of the United States at the first meeting of the Panel, para. 38; *see also* Closing Statement of the United States at the first meeting of the Panel, para. 6.

United States explained why the *EC – Bed Linen* report is not binding on this Panel and why it should not be followed in this case. The United States has nothing to add on this question at this time.

56. In the first sentence of paragraph 20, the EC appears to suggest that the issue of multiple comparisons is only relevant to "a broad determination of the product under consideration and the like domestic product." The United States disagrees. Article 2.4 of the AD Agreement requires that other differences that affect price comparability, beyond differences in physical characteristics, also be taken into account when making comparisons. For example, differences in level of trade are among the differences that may affect price comparisons. Thus, even when there is only one "model" of the "product under consideration," it may still be appropriate to have multiple comparisons if there are sales at multiple levels of trade in the markets being examined. In order to capture level of trade distinctions, or model distinctions, if any, multiple comparisons may be necessary and appropriate under the weighted average to weighted average comparison methodology of Article 2.4.2 for calculating margins of dumping on "comparable" export transactions.

57. We note that, like Japan, the EC relies upon the term "negative dumping margins." As discussed in response to Question 34, above, the AD Agreement does not recognize "negative dumping margins" and the EC cites no authority for this concept.

G. COMPANY-SPECIFIC ISSUES

G.1 Common Questions on Various Company-Specific Issues

To the US:

> **41. With regard to each of the company-specific issues in its *First Oral Statement*, please address the comments made by Canada that the investigation was not conducted in an unbiased and objective manner. Those comments should address, *inter alia*,**
>
> - **Canada's allegations in various paras. of its *First Oral Statement* that statements containing factual data presented by the US in its *First Written Submission* were incorrect (see for instance para. 94 of Canada's *First Oral Statement*) and**
> - **Canada's contention that DOC "did not consider the merits of the record evidence" submitted by certain exporters concerning the**

company-specific issues before the Panel (see for instance para. 79 of Canada's *First Oral Statement*).

58. The United States will first address Canada's contention that Commerce did not conduct the investigation in an unbiased and objective manner.

59. During the course of the lumber investigation, Commerce calculated costs for purposes of determining whether sales were made below the cost of production and, where necessary, for constructing normal value. Canada argues that, in calculating these costs, Commerce ignored evidence and automatically applied its standard cost methodologies without regard for the factual circumstances of individual producers. However, as is clear from its Final Determination, Commerce fully considered the lumber producers' evidence and arguments and diligently followed the preference in Article 2.2.1.1 for relying on a company's own records where appropriate.

Abitibi G&A

60. In determining cost of production for a product under investigation, it is necessary to attribute to the product some part of the producer's general and administrative (G&A) costs, including financial costs. While the AD Agreement does not prescribe a particular method for allocating these costs, we have provided background on Commerce's practice in response to Question 43. In the case of respondent Abitibi, Commerce applied a "cost of goods sold" methodology in allocating the company's financial costs. While not objecting to the "cost of goods sold" methodology *per se*, Canada contends that Commerce should have applied a different methodology, one based on the value of assets in each of Abitibi's divisions, in allocating financial cost.

61. Canada's claim – that Commerce failed to consider all relevant evidence before selecting an allocation method – is incorrect. As discussed fully in Comment 15 of the Final Determination, Commerce declined to employ Abitibi's suggested methodology after considering the facts and arguments for and against it in an unbiased and objective manner. Commerce reasoned that money is fungible, and interest costs, by definition, relate to the overall borrowing needs of a company. Borrowed money may be used for a full range of purposes, including financing fixed assets or ongoing operations. There is no basis for allocating borrowed money to only one activity. In light of this fact, the "cost of goods sold" methodology was a reasonable basis for allocating interest costs.

62. Moreover, contrary to Canada's contention, the "cost of goods sold" methodology does not ignore asset values. Those values are reflected in the depreciation costs included in the cost of goods sold and the cost of manufacturing the like product to which the financial expense ratio

is applied. That is, greater depreciation costs will be allocated to more asset-heavy divisions of a company.

Tembec G&A

63. As discussed in the Final Determination, Commerce rejected Tembec's division-specific methodology, because G&A costs, by definition, relate to the company as a whole.[38] Canada argues that Commerce should have calculated G&A costs on Tembec's division-specific basis, rather than a company-wide basis. However, Tembec's proposed G&A methodology contradicts the general nature of this cost. It is based on the unsubstantiated premise that general costs are incurred on a divisional rather than a company-wide basis. Moreover, Tembec's methodology is based on unaudited amounts of G&A costs. In sharp contrast, Commerce's methodology is based on the G&A reported in Tembec's audited financial statement, and is therefore consistent with Article 2.2.1.1.

Weyerhaeuser G&A

64. With respect to Weyerhaeuser, Commerce included an allocated portion of certain litigation settlement costs in Weyerhaeuser's general and administrative (G&A) costs. A parent company will frequently incur general costs, such as these litigation settlement costs, that are costs of doing business for all of the operations of the parent company. Where a subsidiary is a respondent producer/exporter in an antidumping investigation, Commerce's ordinary practice is to apportion the parent's G&A costs over sales of all merchandise produced by the entire company, provided the costs are general to the operations of the entire company. This practice comports with Articles 2.2.1.1 and 2.2.2, and is not disputed by Canada. Nor was it disputed by Weyerhaeuser during the investigation.

65. What is in dispute is Commerce's decision to include in Weyerhaeuser's G&A an apportioned amount of the litigation settlement charges at issue. Commerce did so based on its reasoning that business charges of this nature should be allocated "over all products because they do not relate to an [sic] production activity, but to the company as a whole."[39] Information submitted by Weyerhaeuser did not support a deviation from this practice. Weyerhaeuser's own financial statement did not classify the litigation expenses as part of the cost of products sold.[40] Instead, Weyerhaeuser recorded the litigation settlement costs among its general costs, albeit in a separate line item. The general nature of these litigation settlement costs is revealed by

[38]Final Determination, Comment 33 (Exhibit CDA-2).

[39]Final Determination, Comment 48b, p. 134 (Exhibit CDA-2).

[40]Weyerhaeuser 2000 Annual Report, p. 53 (Exhibit CDA-101).

explanatory note 14 to the financial statement, which states that such legal proceedings are "generally incidental to its business."[41]

66. Canada makes two arguments on this issue. First, Canada states that the litigation settlement costs were not included in the "G&A" line item on Weyerhaeuser's books and records.[42] But this is semantics. Simply because Weyerhaeuser broke this litigation cost out of G&A and reported it as a separate line item does not justify excluding it from the company's general costs. As described above, note 14 to the firm's own consolidated financial statement supported accounting for the costs as general costs.

67. Second, Canada claims that the litigation settlement costs pertained to the production and sale of hardboard siding.[43] However, simply because the settlement arose from claims relating to hardboard siding does not make these costs of producing hardboard siding. In fact, these claims arose years after the hardboard siding involved in the litigation was produced. Moreover, Canada has failed to provide any recognized alternative accounting category for this cost that is consistent with Weyerhaeuser's own treatment of it in its audited financial statement. For these reasons, Commerce properly included the litigation settlement costs in its calculation of total G&A, in accordance with Articles 2.2.1.1 and 2.2.2.

By-Product Offset for Wood Chips

68. Canada's next set of arguments concerns Commerce's calculation of offsets to certain respondents' costs of production. Production of softwood lumber yields wood chips as a by-product. Producers are able to sell the wood chips to pulp mills. In calculating companies' costs

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[41] *Id.* at p.75, n. 14 (Exhibit CDA-101). Because Canada suggested orally at the first Panel meeting that this reference was not describing the litigation settlement claims at issue, it may be useful to review the statement in full:

> The company is a party to legal proceedings and environmental matters generally incidental to its business. Although the final outcome of any legal proceeding or environmental matter is subject to a great many variables and cannot be predicted with any degree of certainty, the company presently believes that the ultimate outcome resulting from these proceedings and matters, including those described in this note, would not have a material effect on the company's current financial position, liquidity or results of operation; however, in any given future reporting period, such proceedings or matters could have a material effect on results of such operations.

Id. Thus, Weyerhaeuser's own books and records support the conclusion that these litigation settlement claims related to the operations of the company as a whole.

[42] *See* Canada's First Oral Statement, para. 94.

[43] *See id.* at para. 93.

of producing softwood lumber, Commerce took wood chip sales into account as an offset. That is, Commerce reduced a company's cost of softwood lumber production by an amount determined to be the cost of producing wood chips.

69. Canada challenges the methodologies Commerce used in valuing wood chip offsets. In evaluating that claim, the appropriate starting point is Article 2.2.1.1 of the AD Agreement. As we noted in discussing allocation of G&A expense, that provision does not prescribe particular methodologies for calculating cost of production. However, Article 2.2.1.1 does state that investigating authorities shall normally rely on a producer's records, provided that they are kept in accordance with generally accepted accounting principles and reasonably reflect costs associated with production and sale of the product under consideration. For both of the companies at issue, that is precisely what Commerce did.

West Fraser Wood Chips

70. Wood chips have no independent cost associated with their production, because they are a by-product of lumber production. The task for Commerce was to identify a reasonable value for this by-product. In determining a wood chip offset for respondent West Fraser, Commerce reviewed West Fraser's sales to affiliated entities and compared that information to data on West Fraser's sales to unaffiliated parties, as a benchmark. The benchmark was used to determine whether sales to affiliated entities were at market prices and to make adjustments as appropriate.

71. Arguing that this valuation method was in violation of the AD Agreement, Canada claims that West Fraser's sales volumes to unaffiliated entities were "tiny."[44] On the contrary, the amounts of chips sold by the McBride and Pacific Island Mills were significant in terms of tonnage and value.[45] West Fraser never argued that the quantity of wood chips sold cast doubt on the reasonableness of the value of those sales as a benchmark during the investigation. So long as the wood chip transactions were commercial in nature, the actual volume of those transactions is irrelevant. As the United States explained in its First Written Submission, Canfor argued that some of its transactions were not commercial in nature, and Commerce agreed with that assessment of those transaction and did not use values derived from those transactions in its calculations. West Fraser, on the other hand, never made such an argument.[46]

[44] Canada's First Oral Statement, para. 109.

[45] *See* U.S. First Written Submission, para. 219, n. 251; West Fraser Cost Verification Exhibit C5, WF-Cost-007503 (Exhibit CDA-106).

[46] *See* U.S. First Written Submission, para. 225, n. 268.

72. Canada's arguments ignore the preference in Article 2.2.1.1 for basing cost calculations on a company's own records. If West Fraser's records were somehow not representative of its sales, then West Fraser had an obligation to demonstrate that fact. It did not do so.

Tembec Wood Chips

73. Tembec, unlike West Fraser, had no sales of wood chips to affiliated parties. Instead, it had inter-divisional sales, which Commerce determined to be a reasonable basis for determining the value that Tembec attributed to wood chips. Article 2.2.1.1 obligates investigating authorities to use the books and records of an investigated party in calculating costs if the value on the books and records reasonably reflects a cost of production. The same obligation holds true for the valuation of a by-product for purposes of an offset. Canada challenges Commerce's use of Tembec's actual valuation of wood chips, and states a preference for using another value. However, the fact that Tembec's market transactions were valued higher than Tembec's interdivisional transfers does not undermine the reasonableness of the value Tembec itself assigned to the by-products. Commerce reviewed these amounts, and consistent with its obligations under Article 2.2.1.1 of the AD Agreement, it used these figures.

74. Canada argues that Commerce should not have relied on Tembec's records, because those records showed that inter-divisional transaction values were arbitrary.[47] However, contrary to Canada's assertion, Commerce made no such determination, and the evidence does not support that claim. In the end, Canada asks this Panel to determine, in effect, that Tembec's own valuation data were arbitrary, and that Commerce's rationale for using these data violated the AD Agreement. The facts of the record do not support such a finding.

Slocan's Profits from Futures Trading Contracts

75. Canada argues that Commerce failed to properly account for profits from respondent Slocan's sales of lumber futures contracts. But, as the United States said in paragraph 247 of its First Written Submission, Slocan only requested two alternative treatments for these profits: (1) adjustment to direct selling expense and (2) offset to financial costs. If there was a third way to treat them – as indirect selling expenses – that claim was never made.

76. Slocan unambiguously stated that the hedging profits should be treated as an adjustment to direct selling expenses in the U.S. market for differences in the conditions and terms of sale.[48]

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[47] Canada's First Written Submission, para. 260.

[48] *See* Slocan July 23, 2001 Section B, C, & D Questionnaire Response, C35-37; in the same submission, Slocan unambiguously asserted that it did not incur indirect selling expenses.

However, the facts demonstrated that these profits were not direct selling expenses. They were not directly related to particular softwood lumber sales.[49]

77. We disagree with Canada's suggestion (First Oral Statement, paragraph 121) that Article 2.4 does not require a price adjustment to be directly related to the actual sales transaction being compared. An adjustment cannot be demonstrated to affect price comparability, as required under Article 2.4, if it is not related to an actual transaction. If Slocan's futures contracts were indirect selling expenses, Slocan had an obligation to make that claim, which it did not.

78. Slocan also asked that its hedging profits be treated as an offset to financing costs. However, as an accounting matter, Slocan's own books and records treated the profits at issue as a type of lumber revenue, albeit revenue that was not generated by actual sales of softwood lumber. Therefore, it would have been inappropriate for Commerce to disregard Slocan's own treatment of the profits as linked somehow to lumber sales and instead treat them as offsets to cost of production.

79. Next, the United States addresses certain specific and incorrect allegations made by Canada in its Oral Statement.

- **First Oral Statement, paragraph 18**

80. Canada's claim in paragraph 17 of its First Oral Statement that the application did not contain "actual transaction information" is incorrect. For elaboration on this issue, see U.S. Response to Question 14. Canada's suggestion that acceptance of the application was not something "an objective investigating authority assessing the evidence" would have done is also incorrect. The AD Agreement does not require that the application contain information beyond what is sufficient to support initiation.

- **First Oral Statement, paragraph 20**

81. Canada's claim that the United States "cannot credibly argue . . . that Commerce conducted an objective further examination of the information provided in the application" ignores the record evidence regarding Commerce's "further examination" of the application.[50] Instead, Canada bases this charge on the premise that, had Commerce conducted an "objective further examination, it would have discovered that the Petitioner was holding back extremely important and relevant evidence." As explained in the U.S. First Written Submission, because

[49] *See* Slocan Cost Verification Report at 26 (CDA-118); *see* Final Determination, Comment 21 (CDA-2).
[50] S*ee* U.S. First Written Submission, paras. 63-64 and the documents cited therein.

the experience of one company could not have negated evidence of dumping by other companies, the Weldwood data could not have had the significance Canada attaches to it.[51]

- **First Oral Statement, paragraph 29**

82. Weldwood placed certain sales data on the record when seeking to be considered a voluntary respondent in the investigation. The fact that the United States did not analyze this data cannot justify Canada's suggestion that Commerce remained "willfully blind to evidence which would throw the applicant's application into doubt." The United States demonstrated, at paragraphs 65-69 of its *First Written Submission*, that the Weldwood data could have shown, *at most*, that Weldwood was not dumping. It could not have negated the evidence of dumping in both eastern and western Canada contained in the application. As such, the Weldwood data could not reasonably be described as "evidence which would throw the applicant's application into doubt." Commerce did, in fact, decline to analyze the data submitted by Weldwood after initiation. As a practical matter, Commerce could only analyze data from six out of the hundreds of Canadian softwood lumber producers. It chose which companies' data to analyze according to the value of exports to the United States. Documentation regarding Commerce's handling of the Weldwood data remained part of the case record throughout the investigation.[52]

- **First Oral Statement, paragraph 79**

83. Canada continues to claim that the United States failed to consider Abitibi's evidence relating to financial costs and asset values. This is incorrect. Commerce explains why it rejected Abitibi's argument in the Final Determination*,* Comment 15. Specifically, Commerce explained that it did not accept Abitibi's basic premise that interest costs could be tied to particular expenditures. In addition, Commerce explained that the methodology actually used accounted for the varying asset levels through depreciation costs.[53]

- **First Oral Statement, paragraph 89**

84. Canada argues that the United States was factually incorrect when it stated that Tembec's "divisional G&A" had to be supplemented with "headquarter G&A." Canada is incorrect. Canada stipulated in its First Written Submission that Tembec's suggested G&A methodology required the allocation of some portion of "headquarter G&A" to Tembec's softwood lumber division.[54] Thus, Tembec's methodology was not only based on the unaudited amount of G&A

[51] *See* U.S. First Written Submission, paras. 70-76.
[52] *See* Exhibit US-64.
[53] *See also* U.S. First Written Submission, para. 194.
[54] *See* Canada's First Written Submission, para. 209.

that Tembec claims was specific to the softwood lumber division, it also included an unaudited amount for "headquarter G&A."

- **First Oral Statement, paragraph 90**

85. Canada claims that Tembec's "division specific" G&A was in accordance with Canadian GAAP. This is an unsubstantiated claim. Moreover, the only evidence on the record indicates that this "division specific" G&A was *not* audited.[55] Commerce's methodology, in contrast, is based on an allocated portion of the G&A found in Tembec's audited financial statement. Thus, Commerce's methodology is in accordance with Article 2.2.1.1. Moreover, Tembec's methodology contradicts the most basic definition of general costs, which are costs incurred on behalf of an entire company, rather than a particular product.[56]

- **First Oral Statement, paragraph 94**

86. Canada claims that Weyerhaeuser did not report its litigation cost as a general cost to the company. Canada is incorrect. The U.S. discussion of Weyerhaeuser at paragraphs 64-67 explains Commerce's basis for finding that Weyerhaeuser reported the litigation cost as a general cost.

- **First Oral Statement, paragraph 95**

87. Canada incorrectly asserts an absence of factual information that Weyerhaeuser's litigation costs were properly allocable to softwood lumber. The U.S. discussion of Weyerhaeuser at paragraphs 64-67 explains Commerce's basis for finding that the litigation cost was a general cost.

- **First Oral Statement, paragraph 105**

88. Canada claims that Commerce "ignored the record evidence of prices at which Tembec's pulp mills in Ontario and Quebec purchased wood chips from affiliated suppliers." In fact, in the Final Determination, Commerce specifically addressed those transactions, explaining that "the documentation presented at verification" that contained these prices was "selectively provided by companies and not based on a sample chosen by the Department."[57] Commerce added that "these comparisons represented only a portion of the total wood chip purchases by [Tembec]'s pulp

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[55]*See Tembec's Annual Report, "Auditors Report,"* p. 34 (Exhibit US-12 at 3).

[56]Joel G. Siegel and Jae K. Shim, *Dictionary of Accounting Terms* (Barron's Educational Services, Inc. 2nd ed. 1995) (Exhibit US-47).

[57]Final Determination, Comment 11 (Exhibit CDA-2).

mills and there is no record evidence to determine what the results might be if all mills were included."[58]

- **First Oral Statement, paragraph 116**

89. Canada claims that Commerce "unreasonably disregarded certain sales by West Fraser as 'inflated' even though it verified that those sales reflected market prices." Commerce never verified that those sales reflected market prices. In fact, it affirmatively determined that those affiliated sales did *not* reflect market prices.[59]

- **First Oral Statement, paragraph 120**

90. Canada argues that Commerce rejected the Slocan futures profit data despite evidence that the data related to lumber. See the U.S. answer to Question 82 for a discussion of Commerce's thorough evaluation of the facts.

> **42. Please explain the methodology used with respect to treatment of by-product revenue offsets, and the manner in which by-product revenues were offset in the case before the Panel.**

91. In the process of manufacturing softwood lumber, wood chips are produced. These wood chips are minor in value when compared to lumber or joint products from the lumber production process, and they have no independent cost associated with their production. Therefore, by definition, they are by-products. These wood chips are subsequently sold by lumber sawmills to pulp mills through different types of transactions. Tembec's sawmills sold wood chips to Tembec's pulp mills through interdivisional transactions – sales within the same company. West Fraser, on the other hand, sold wood chips to affiliated pulp mills. Finally, both Tembec and West Fraser sold wood chips to mills with which they had no corporate relationship whatsoever.

92. In calculating a company's cost of production of softwood lumber, Commerce will offset the total pool of joint lumber production costs by revenue from wood chip sales. Article 2.2.1.1 of the AD Agreement states that investigating authorities have an obligation to use a company's books and records in its cost calculations if those books and records reasonably reflect the cost of production. This also applies to the valuation of an offset to the cost of production calculation. For purposes of the by-product offset, Commerce will use the actual valuation of a by-product from a company's books and records, unless it believes that amount does not reflect a reasonable

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[58]Final Determination, Comment 11 (Exhibit CDA-2).

[59]U.S. First Written Submission, para. 220 and exhibit cited therein.

valuation of that by-product. In the case of the six respondents in the investigation, Commerce used the valuation for wood chips recorded by all of the companies except West Fraser.

93. West Fraser had sales to affiliated pulp mills and unaffiliated pulp mills. Unlike Tembec, it had no interdivisional transfers of wood chips. In evaluating sales to affiliated entities, Commerce applies as a benchmark sales to unaffiliated entities. In this way, Commerce determines whether an amount reported for an affiliated sale is a reasonable reflection of the actual cost of production (or actual value of a by-product in the case of a by-product offset). In the case of West Fraser's Alberta transactions, because these sales of wood chips involved affiliated parties, Commerce compared them to West Fraser's unaffiliated sales in Alberta and determined that the prices of wood chips in affiliated sales were appropriate to use in its calculations. With respect to the British Colombia transactions, Commerce reviewed West Fraser's unaffiliated transactions within British Colombia and found them to be commercial transactions that reflected a market value. It then reviewed West Fraser's affiliated transactions and determined that the prices for wood chips paid by the affiliated parties did not reasonably reflect a market value for wood chips. Thus, Commerce removed the affiliated valuations in its calculations for West Fraser's sales in British Columbia and valued them with the price of wood chips in West Fraser's unaffiliated transactions.

94. Canada now argues that Commerce should have used the prices for West Fraser's affiliated transactions, because most of the transactions in British Columbia were with affiliated parties. Canada also argues that some of the unaffiliated transactions (from the McBride mill) were subject to a contract that kept prices constant. However, Canada does not discuss the commercial validity of the rest of the transactions (from the Pacific Island Resources mill).

95. West Fraser's total unaffiliated transactions involved a significant tonnage of wood chips to separate unaffiliated parties, with a significant commercial value.[60] However, it is not the volume of the transaction that makes it a market based transaction, but the commercial setting and the details surrounding the sale. In this case, West Fraser did not argue that its unaffiliated transactions were either too small or not market-based. Thus, Commerce determined that there was no reason to question the representativeness of these transactions, and it used the wood chip prices from these transactions to value West Fraser's by-product offset in its production costs.

96. With respect to Tembec, Canada claims that Commerce should not have used Tembec's interdivisional wood chip valuations, because Commerce (allegedly) verified that these prices were arbitrary and that Tembec's market sales were larger than its interdivisional sales. As Commerce explained in the Final Determination and the U.S. First Written Submission,

[60]West Fraser Cost Verification Exhibit C5, WF-Cost-007503 (Exhibit CDA-106).

Commerce never verified that Tembec's interdivisional values were arbitrary,[61] and to the contrary, actually determined that Tembec's interdivisional value for wood chips reasonably reflected a value for that by-product.[62]

97. In determining a "reasonable" amount for valuing the *by-product offset* in interdivisional transactions, Commerce uses the same methodology that it uses for valuing *costs* in interdivisional transactions. As a standard corporate practice, interdivisional transfer values reflect actual costs of production (since the company does not need to include a profit in its price to itself). With respect to by-products, absent any independent costs, Commerce normally takes the internal value assigned by the company to a by-product as a surrogate for an appropriate value for the by-product, and then tests that value for reasonableness, as done here. Because Commerce normally values interdivisional transfers at actual cost, which is less than market value (because of the existence of profit in market value), a value assigned to a by-product is also commonly less than market value.

98. Canada argues that this makes no sense, because if a by-product has no cost, then there can be no "profit." However, even a by-product with no independent cost can be assigned a company's best assessment of a surrogate for cost. This is what Tembec did when it set its internal transfer price. There are no easy methods to assess value under such conditions, but Commerce examined Tembec's assessment and found that it was reasonable. Tembec set an internal surrogate for cost, and it also had an external market price; the difference between the two is the equivalent of "profit" in the normal setting where costs and sales prices are known.

99. Given these inherent difficulties, and contrary to Canada's analysis that there could be no "profit," there also has not been an "arbitrary" valuation, because Commerce used the company's own valuation data to make its determination of a "reasonable" figure for a by-product offset.

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[61]When evaluating Tembec's British Columbia sawmills, Commerce stated:

> We compared Tembec's British Columbia ("BC") sawmills' internal transfer prices for wood chips to the BC sawmills' wood chip sales prices to unaffiliated purchasers (i.e., BC market prices). *We found that the company's internal transfer prices did not give preferential treatment to the sawmills. Thus we relied on their normal books and records for the final determination.* (Emphasis added).

DOC Memorandum on Tembec Cost Calculation Adjustments for the Final Determination (March 21, 2002), at 2 (Exhibit US-58).

[62]In the Final Determination, Commerce "analyzed the wood chip sales transactions between Tembec's sawmills and its internal divisions to evaluate whether the internally set transfer prices (were) reasonable." Final Determination, Comment 11 (Exhibit CDA-2). Pursuant to this analysis, it found that the weighted average transfer price between Tembec's own British Colombia sawmills and pulp mills was a reasonable surrogate for the actual cost of wood chips, and it therefore used this number as Tembec's by-product offset. *Id.*

43. When addressing Canada's company-specific issues relating to the determination of the SG&A expenses of Abitibi, Tembec and Weyerhaeuser, please explain which of the methodologies were applied by DOC to calculate the general and administrative expenses of Abitibi, Tembec and Weyerhaeuser and how they are consistent with the provisions of Article 2.2.2 of the Anti-Dumping Agreement.

100. In answering this question, the United States will first provide a general description of its SG&A methodology.

101. In order to calculate SG&A, Commerce calculates selling costs, general and administrative costs, and interest costs. Direct selling costs, such as commissions, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question are assigned on a sales-specific basis to the extent possible.

102. Indirect selling costs, which do not result from a particular sale (*e.g.*, salesman's salaries, office supplies) are allocated over all sales made by the sales unit incurring the costs, on the basis of sales value.

103. Other than financial costs, general and administrative (G&A) costs for the like product are allocated to all sales by the producer, through application of a G&A ratio. The producer's total G&A is divided by the producer's total cost of goods sold. If the producer is part of a consolidated entity, Commerce includes in the calculation that portion (ratio) of the parent company's G&A pertaining to the producer under investigation. The resulting quotient is the G&A ratio and represents the amount of G&A incurred for each dollar of production cost. The G&A ratio is applied to the total cost of production of the like product in order to determine the non-financial general and administrative costs pertaining to the production of the like product.

104. Financial costs are also allocated to all sales by the producer (through a financial cost ratio). The producer's total interest cost is divided by the producer's total cost of goods sold. Because money is fungible, a dollar borrowed is not identifiable with any particular product within a company. For example, money borrowed by a company producing several different products may be expended as easily on lumber production as it is on paper production. Accordingly, in calculating the financial cost ratio, Commerce starts at the highest level of corporate consolidation. Thus, if a corporate entity consisted of a parent and several subsidiaries, Commerce would calculate its financial cost ratio based on the total financial cost reported on the parent's consolidated financial statement divided by the parent company's total cost of goods sold. The resulting quotient is the financial cost ratio and represents the financial costs the producer incurs for each dollar of production cost. The financial cost ratio is applied to the total cost of producing the like product in order to determine the financial costs pertaining to the production of the like product.

105. Commerce employed the methodology described above in calculating G&A costs for Abitibi, Weyerhaeuser, and Tembec. As this methodology was based on the actual cost data provided by Abitibi, Weyerhaeuser, and Tembec and was like product specific (*i.e.* the financial cost ratio and the G&A ratio were applied to the cost of producing softwood lumber), this methodology is fully consistent with the chapeau of Article 2.2.2, and with Article 2.2.1.1.

To both parties:

> **44. What obligations does Article 2.2.1.1 impose: 1) in general on investigating authorities, and 2) with respect to the determination of by-product revenue offsets?**

106. Article 2.2.1.1 establishes obligations on investigating authorities with respect to their consideration and use of cost data provided by respondents in an investigation. It states that it is "[f]or the purpose of paragraph 2", which means that, in the context of Article 2.2, it covers "*cost* of production" and also "a reasonable amount for administrative, selling and general *costs*." In particular, investigating authorities are directed by this provision to:

1) calculate costs normally on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration;

2) consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer. Emphasis should be placed on that evidence which establishes appropriate amortization and depreciation periods and allows for capital expenditures and other development costs; and

3) adjust appropriately for non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations (unless already reflected in the cost allocations).

107. Article 2.2.1.1 provides no specific guidance on the question of determining the reasonableness of the costs of by-products or by-product offsets.[63] It speaks more generally to the cost of production of the product under investigation. Where an exporter's cost records in

[63] Indeed, the United States notes that the AD Agreement contains no requirement to make a by-product offset. The only issue is the extent to which an investigating authority has found that the cost records for production of the product under consideration are a reasonable reflection of the costs associated with such production. It becomes an issue, in most cases, where the GAAP of the exporting country allows an exporter's records to use the by-product revenue as an offset.

accordance with GAAP include a revenue offset, calculating a by-product offset can be a necessary step in calculating the cost of producing the product under consideration. The general guidance in Article 2.2.1.1 applies to each of the particular steps in calculating cost of production, including calculation of a by-product offset.

45. For the terms "actual data pertaining to production and sales (…) of the like product" in Article 2.2.2, please explain the application of this sentence in general and in light of the company-specific issues in this case.

108. The chapeau of Article 2.2.2 expresses a preference for basing the amounts for administrative, selling and general costs and for profits on the actual amounts that pertain to the production and sale in the ordinary course of trade of the like product. If a producer's actual data pertaining to the production of the like product is not available, or if sales of the like product have not been in the ordinary course of trade, Article 2.2.2 provides three alternative methodologies for calculating SG&A and profit.

109. Abitibi, Tembec, and Weyerhaeuser reported actual general and administrative costs that were incurred on behalf of each company. As these general and administrative costs, by definition, were incurred on behalf of each company, in their entirety, they pertained, in part, to the production and sale of the like product for each company. Therefore, a portion of each producer's actual costs was allocated to the like product by applying the G&A and financial cost ratios to the cost of manufacturing the like product. Because the selling, general, and administrative costs were based on each producer's actual data, sales were in the ordinary course of trade, and the costs pertained to the like product, these costs were calculated consistently with the chapeau of Article 2.2.2.

46. What is the relationship, if any, between Articles 2.2.1.1 and 2.2.2 of the Anti-Dumping Agreement?

110. Article 2.2.1.1 and Article 2.2.2 relate to the obligations of investigating authorities in calculating a producer's cost, including for purposes of determining whether the producer is selling below the cost of production and also constructing a normal value. Article 2.2.2 addresses administrative, selling and general costs and profit in particular, while Article 2.2.1.1 addresses all cost calculations (including G&A). Article 2.2.2 expresses a preference for basing the calculation of administrative, selling, and general costs and of profits on the actual amounts that pertain to the production and sales in the ordinary course of trade of the like product and the actual profits realized. However, if a producer's actual data pertaining to the production of the like product cannot be determined on this basis, Article 2.2.2 provides alternative methodologies for calculating these costs. Article 2.2.1.1 expresses a preference for basing the calculation of all costs on the books and records of the producer, provided that those books and records are kept in

accordance with the GAAP of the country of production and that they reasonably reflect the costs associated with the production and sales of the like product. Thus, while both provisions express a general preference for costs to be calculated on a producer's data pertaining to or associated with the like product, Article 2.2.1.1 clarifies what kind of data an investigating authority is obligated to consider (*i.e.*, books and records kept in accordance with the GAAP of the country of production and that reasonably reflect the cost associated with the production and sales of the like product).

G.2 Calculation Financial Expenses of Abitibi

To Canada:

47. Please comment on the statements contained in p. 77 of DOC's Memorandum of 21 March 2002 (Exhibit CDA-2):

"[t]he Department's method addresses Abitibi's concern that those activities are more capital intensive. Specifically, those activities would have a higher depreciation expense on their equipment and assets. Thus, when the consolidated financial expense rate is applied to the cost of manufacturing of lumber products, less interest will be applied because the total cost of manufacturing for lumber products includes a lower depreciation expense."

111. As the quoted passage indicates, Commerce's methodology reflects asset values, because the cost of goods sold, upon which financial costs are allocated, as well as the cost of manufacturing the like product to which the financial cost ratio is applied, both include depreciation values. Canada argues that because certain types of assets are not depreciated (*e.g.,* land and goodwill), Commerce's methodology is unreasonable.[64] However, the vast majority of Abitibi's assets (approximately C$8 billion out of C$11 billion in total assets) were "capital assets" and were represented in Commerce's financial cost methodology through depreciation costs.[65] Moreover, contrary to Canada's assertion in its *First Oral Statement* (paragraph 84), Commerce included an amortized portion of goodwill in Abitibi's cost of production.[66]

[64]*See* First Oral Statement of Canada, para. 84.
[65]*See Abitibi 2000 Consolidated Financial Statement*, p. 35 (Exhibit CDA-82).
[66] Final Determination, Comment 16 (Exhibit CDA-2).

G.3 Calculation of G&A Expenses of Tembec

To the US:

56. In paragraph 200 of its *First Written Submission*, the US states that:

> **"Commerce determined that, because the division-specific amount at issue was unaudited, it was inherently less reliable than audited books and records that had been certified to be consistent with Canadian GAAP. There was greater certainty that audited GAAP-consistent books and records would "reasonably reflect the costs." Second, Commerce determined that relying on division-specific costs was inconsistent with the very nature of G&A expenses, which are, by definition, company-wide expenses." (footnotes excluded)**

Could the US please direct the Panel to where on the record did DOC make such determinations? Please provide detailed references to relevant portions of documents as well as copies thereof.

112. Commerce recognized in its Final Determination that Tembec reported its G&A based on an "internal accounting methodology" rather than on its audited financial statements.[67] Commerce also stated that it was employing its standard G&A methodology in order to avoid "any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionately between divisions."[68] Finally, Commerce noted that its standard G&A methodology "is consistent with Canadian GAAP's treatment of such period costs. . ." Commerce's decision to reject this unaudited G&A amount was reasonable, because an unaudited amount is of questionable reliability. The importance of the reliability of cost data is clearly recognized in Article 2.2.1.1, which states that an investigating authority should normally consider only those books and records that are kept in accordance with the GAAP of the country where the like product is produced and reasonably reflect the cost associated with the production and sale of the like product.

113. Commerce also recognized in its Final Determination that, consistent with the definition of "general costs," G&A relates to the company as a whole rather than a particular product. Commerce stated that its methodology was consistent "with the general nature of [G&A]

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[67] *Id.* at Comment 33; *see also* Verification Report on the Cost of Production and Constructed Value Data Submitted by Tembec Inc., p. 26 (January 29, 2002) (Exhibit US-73) (stating that Commerce tied Tembec's G&A costs to the audited financial statements).

[68] *See* Final Determination, Comment 33.

expenses and the fact that they relate to the activities of the company as a whole rather than a particular production process."[69] Tembec's methodology contradicts this basic definition and is based on the unsubstantiated premise that general and administrative costs are incurred primarily on a divisional level.

57. Could the US please indicate which of the methodologies in Article 2.2.2 did DOC use to determine the SG&A for Tembec?

114. Commerce determined Tembec's SG&A under the chapeau of Article 2.2.2. As discussed in the answer to Question 43, Commerce calculated Tembec's G&A by applying the company-wide G&A ratio to the cost of manufacturing of the like product.[70] The resulting amount represents the G&A cost that pertains to Tembec's production and sale of the like product. As Commerce's methodology relied on Tembec's own data and calculated SG&A specific to the like product under investigation (*i.e.*, the G&A ratio was applied to the cost of manufacturing the like product), it is fully consistent with the chapeau of Article 2.2.2. Given the availability of Tembec's actual data pertaining to the production of the like product, there was no basis for Commerce to use the other methodologies available under Article 2.2.2(i), (ii), and (iii).

G.4 Calculation of G&A (Legal Costs) of Weyerhaeuser

To Canada:

58. Could Canada please direct the Panel to where in the record it can find Weyerhaeuser's arguments on the treatment of certain legal settlement claims incurred by Weyerhaeuser US. Please include references to documents on the record, identifying <u>with precision</u> where on the document Weyerhaeuser's argument are to be found. Also provide a concise summary of Weyerhaeuser's arguments.

115. One place on the record in which the Panel can find Weyerhaeuser's arguments on this legal settlement issue is in the Final Determination, Comment 48b (Exhibit CDA-2), where Weyerhaeuser's arguments, those of the petitioners, and Commerce's decision are fully summarized. This discussion reflects Commerce's consideration of all of the arguments and evidence before reaching its determination.

[69] *Id.*
[70] *See* Section D Questionnaire - Cost of Production and Constructed Value, D-13 (Exhibit US-46).

To the US:

61. In para. 227 of its *First Written Submission*, Canada states that:

> **"[w]ithout providing any citations or evidence to support its conclusion, DOC simply stated that it "typically allocates business charges of this nature over all products because they do not relate to an {sic} production activity, but to the company as a whole."" (footnote omitted)**

Could the US please comment on the above statement. In particular, could the US explain in detail how DOC came to the conclusion that it was justified to reject Weyerhaeuser's request for exclusion of certain legal settlement claims and direct the Panel to where in the record it could find the relevant DOC motivation?

116. In response to this question, the United States refers the Panel to the discussion of "Weyerhaeuser G&A" in the U.S. response to Question 41, paragraphs 65-67.

62. With respect to Weyerhaeuser's arguments relating the treatment of legal settlement costs, it is stated in DOC's Memorandum of 21 March 2002 (Exhibit CDA-2) that:

> **"[w]hile the costs relate to non-subject product, hardboard siding, the Department typically allocates business charges of this nature over all products because they do not relate to an (sic) production activity, but to the company as a whole."**

In para. 211 of the US *First Written Submission*, it is stated that:

> **"[a]s in that case, the nexus here between the litigation costs at issue and production of the product at issue (hardboard siding) was attenuated."**

In light of DOC's finding, could the US explain what the term "was attenuated" means in this context? In replying to this question, could the US please refer to documents/evidence on the record. Please describe and motivate your standard practice.

117. In describing the relationship between the litigation costs and the production of hardboard siding as "attenuated," the United States was stressing that any relationship was weak at best. As

explained in the U.S. answer to Question 41, not only were these litigation expenses not of the type that are production costs (*i.e.*, the litigation does not make or help to make a product), but the expense was incurred anywhere from one year to as long as eighteen years after production and sale of the products at issue.

118. Canada's argument confuses a cost being (possibly) associated with a product and a cost being related to the *production* of a product. The mere fact that litigation was about hardboard siding does not mean that the litigation cost was a cost of producing hardboard siding.

119. When the United States used the word "attenuated," it was describing the weak link between the litigation and the cost of producing hardboard siding. The United States was underscoring the point that a long separation between production of a good and the incurring of a litigation expense associated with the good argues strongly against allocating the expense to the current cost of producing that good.

63. In Egypt – Steel Rebar, the panel found that a "relationship test" is articulated in, inter alia, Articles 2.2.1.1 and 2.2.2 of the Anti-Dumping Agreement. Could the US please comment on this? Is the US of the view that the fact that certain costs are found to be part of the general and administrative expenses of a company allows an investigating authority to automatically allocate a portion of such costs to the like product, or is the investigating authority obligated to establish a relationship between those costs and the production and sale of the like product?

120. Article 2.2.2 of the AD Agreement requires that amounts for administrative, selling, and general costs be based on "actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation." Article 2.2.1.1 requires that costs (including G&A costs) normally be calculated on the basis of an exporter or producer's records where, *inter alia*, those records "reasonably reflect the costs associated with the production and sale of the product under consideration." The *Egypt–Steel Rebar* panel characterized these provisions as setting forth a requirement that there be a "relationship" between the interest income at issue (which typically would be considered as part of G&A cost) and the costs of producing and selling the product under consideration.[71]

121. The United States does not disagree with the general proposition that the words "associated with" and "pertaining to" suggest some relationship between G&A costs and costs of producing and selling the product under consideration. Where the United States disagrees with the *Egypt-Steel Rebar* report, as the U.S. understands it, is in the degree of relationship required.

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[71] *Egypt–Steel Rebar*, para. 7.393.

The panel in *Egypt-Steel Rebar* appeared to require that a given item of G&A expense – in that case, an offset to short-term interest expense – be related *exclusively* to production and sale of the product under consideration in order for it to be includable in that product's cost of production.

122. It is important to recall the facts in *Egypt-Steel Rebar*. As the panel in that case observed, "[T]he calculation of costs in any given investigation must be determined based on the merits, in the light of the particular facts of that investigation."[72] There, respondents were seeking an offset to cost of production for short-term interest earned during the period of investigation. The investigating authority found that the respondents had not shown a relationship between the interest earned and the costs of selling and producing rebar. The panel agreed, stating that it had not found "evidence of record that would demonstrate any relationship of short-term interest income to the cost of producing rebar."[73]

123. The panel in *Egypt–Steel Rebar* made a point of noting the respondents' failure to respond to the investigating authority's information requests.[74] It is, therefore, unclear what evidence would have satisfied the Panel of the existence of a relationship between short-term interest income and the cost of producing rebar. What is puzzling about the panel's finding is that it seems to require that an element of G&A cost (in this case, a short-term interest offset) be related exclusively to the production and sale of the product under consideration. It was not enough that the element was part of G&A for the company producing the product. This is where the United States disagrees with the panel's reasoning.

124. The degree of relationship between G&A and cost of selling and production apparently required by the *Egypt–Steel Rebar* panel runs contrary to the very concept of G&A. By definition, G&A costs consist of expenses incurred on a company-wide basis for the benefit of the company as a whole. In a company that produces multiple products, G&A costs are not exclusive to any one product. They are related to all of the products and are allocated accordingly.

125. A requirement that any given element of G&A cost be associated exclusively with a single product would lead to the absurd result of G&A cost never being allocable to a product where the producer has several different product lines. Plainly, Articles 2.2.1.1 and 2.2.2 do not require that absurd result.

126. In response to the second part of the Panel's question, the United States is of the view that the fact that certain costs are found to be part of the G&A expenses of a company allows an

[72] *Id.*
[73] *Id.* at para. 7.426.
[74] *Id.*

investigating authority to automatically allocate a portion of such costs to the like product. Because general and administrative expenses are incurred for the benefit of a company as a whole, including all lines of production, they necessarily pertain to each particular line of production.

G.5 Calculation By-Product Revenue Offset – West Fraser

To the US:

68. Please comment on the following statements contained in para. 242 of Canada's First Written Submission:

> **"[f]or DOC to have disregarded the costs set out in West Fraser's records, DOC was required to determine that those records did not reasonably reflect the costs associated with the production and sale of the product under consideration. DOC did not make such a determination."**

127. Canada's assertion is incorrect. Commerce did determine that West Fraser's sales to affiliated parties did not reasonably reflect the costs associated with the production and sale of wood chips. Commerce reached this determination by comparing West Fraser's sales to affiliated parties with its sales to unaffiliated parties, as recorded in West Fraser's books. Having determined that West Fraser's sales to affiliates did not reflect market prices, Commerce used the average price for West Fraser's wood chip sales to unaffiliated customers to determine the value of the wood chip offset.[75]

[75] Final Determination, Comment 11 (Exhibit CDA-2).

G.6 Calculation of By-Product Revenues – Tembec

To Canada:

70. Please explain the statement contained in para. 261 of Canada's First Written Submission that:

> **"Article 2.2.1.1 of the Anti-Dumping Agreement reflects the requirement that market price is the appropriate benchmark for valuing by-product revenue offsets."**

128. Canada's statement is based on an incomplete reading of Article 2.2.1.1. The AD Agreement expressly provides that an investigating authority must ordinarily base cost calculations on an exporter or producer's books and records. This would include any valuation of the by-product reflected in the books and records of the producer or exporter, "provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product."

129. It is entirely possible that a given item in a company's books will reasonably reflect costs and still be lower than market price. This is because cost will not include factors such as profit and selling expense, which are elements of market price. Article 2.2.1.1 provides that cost calculations must reasonably reflect the *costs* associated with the production and sale of the product, not the market value of the product.

To the US:

74. Explain on which basis the different rules mentioned in para. 216 of the *US First Written Submission* are consistent with Article 2.2.1.1.

130. In paragraph 216 of its First Written Submission, the United States discusses different methods for valuing a by-product. There are three different scenarios: transactions between unaffiliated parties, transactions between affiliated parties, and transactions between divisions of the same corporate entity. For a detailed explanation of Commerce's practice in each of these scenarios, see the U.S. answer to Question 42, above.

G.7 Futures Contracts

To Canada:

> **79. Please comment on the findings contained in para. 6.77 of the *US – Stainless Steel* panel report:**
>
> > **"[i]n our view, the requirement to make due allowance for differences that affect price comparability is intended to neutralize differences in a transaction that an exporter could be expected to have reflected in his pricing. A difference that could not reasonably have been anticipated and thus taken into account by the exporter when determining the price to be charged for the product in different markets or to different customers is not a difference that affects the comparability of prices within the meaning of Article 2.4." (footnote omitted)**

131. The passage cited in this question refers to differences between home market sales and export sales that may affect price comparability. It presumes that the seller has identified differences that affect particular sales. In this case, Slocan did not even show that the futures contracts at issue were terms and conditions related to particular sales of lumber in the United States. It did not demonstrate that the futures contracts amounted to a "difference" related to export sales, let alone a difference that affected price comparability.[76]

[76] It is evident from Slocan's financial statements that futures profits are just another source of income to the company. The record shows that, where no physical delivery of subject merchandise occurred, Slocan records the profits or losses from these futures contracts as a sales-type revenue in its books and financial statements. Slocan Case Brief at 70, n. 24 (Exhibit US-72). For all practical purposes in this case, since the revenue was not profit from the sale of lumber, it could just as easily have been revenue from the sale of another product. For example, profits from sales of pulp and paper in the United States are not a difference in conditions and terms of sale for lumber. Similarly, in this case, hedging profits are not tied to any sale of lumber.

To the US:

81. Please comment on the following statement contained in para. 277 of Canada's First Written Submission:

> **"DOC could have treated the revenues as an offset to selling expenses, as an offset to financial expenses, or as some other circumstance of sale adjustment. DOC erred, however, when it failed to make any adjustment to account for revenue generated by futures contract revenues."**

132. Slocan requested only two alternative treatments for its futures contract profits. If there was a third way to treat them – as offsets to indirect selling expenses – Slocan did not make that claim.[77]

133. In its July 23, 2001 Questionnaire Response, Slocan unambiguously stated that the hedging profits should be treated as an offset to direct selling expenses in the U.S. market, as an adjustment for differences in the conditions and terms of sale.[78] It stated: "Sometimes Slocan will sell its short positions and take the loss or profit between the sale and strike prices. These expenses or revenues are linked to Slocan's sales in the United States and so are being reported as direct selling expenses."[79] Slocan failed to explain the link between these expenses or revenues and any particular U.S. sales of lumber. It also said nothing about how its contracts might affect prices to U.S. customers. In the same submission, Slocan unambiguously asserted that it did not incur indirect selling expenses.[80] The facts demonstrated that hedging profits were not direct selling expenses, because they were not directly related to particular softwood lumber sales.[81]

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[77]First, Slocan claimed that the futures contracts profits should be an offset to direct selling expenses. Commerce found that Slocan's futures contracts profits are not *direct* selling expenses, as they are not directly related to specific sales of softwood lumber. U.S. First Written Submission, para. 250; Final Determination, Comment 21 (Exhibit CDA-2). Second, Slocan alternatively claimed that the futures contracts profits should be an offset to financing costs included in the calculation of Slocan's cost of production. Commerce found that Slocan's alternative argument also failed, because Slocan's own books and records recorded futures profits as sales revenues, not production expenses. U.S. First Written Submission, para. 254; Final Determination, Comment 21 (Exhibit CDA-2).

[78]Response of Slocan Forest Products Ltd To Sections B, C, & D of the Department of Commerce Antidumping Questionnaire, July 23, 2001, pp. C35-37 (Exhibit US-71).

[79] *Id.* at pp. C-35-36 (Exhibit US-71).

[80]*Id.* at pp. C-37 (Exhibit US-71).

[81]*See* Slocan Cost Verification Report at 26 (Exhibit CDA-118); *see* Final Determination, Comment 21 (Exhibit CDA-2).

134. The United States disagrees with Canada's suggestion (First Oral Statement, paragraph 121), that Article 2.4 does not require a price adjustment to be directly related to the actual sales transaction being compared. An adjustment for alleged differences in conditions and terms of sale cannot be demonstrated to affect price comparability if it is not shown that the claimed difference is related to an actual transaction.[82]

135. In its statements to the Panel, Canada appears to have articulated a claim that is broader than the one Slocan made to Commerce. Slocan urged that its futures contract revenues warranted either an adjustment to "direct selling expense" or an offset to interest expense. Now, Canada argues that the revenues warranted an adjustment to "selling expense," significantly omitting the word "direct."[83]

136. Omission of the word "direct" effectively draws in indirect selling expense. However, Slocan never sought an adjustment to indirect selling expense. In fact, it stated that it had no indirect selling expenses in the United States.[84]

137. Under Article 2.4, Commerce had no obligation to make an adjustment that the respondent did not seek.[85] Article 2.4 requires that "due allowance" be made "in each case, on its merits" where a difference is "demonstrated" to affect price comparability. Since Slocan did not even make the argument for an adjustment to indirect selling expense, there was no basis for Commerce to determine that the merits warranted such an adjustment.

138. Slocan also had asked in the investigation that its hedging profits be treated as an offset to financing costs. However, as an accounting matter, Slocan's own books and records treated the profits at issue as a type of lumber revenue, albeit revenue that was not generated by actual sales of softwood lumber. Therefore, as noted in paragraph 246 of the U.S. First Written Submission, it would have been inappropriate for Commerce to disregard Slocan's own treatment of the profits as linked, albeit indirectly, to lumber sales and instead treat them as offsets to cost of production.

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[82]*See* Panel Report, *Antidumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 Feb. 2001, para. 6.77.

[83]*See* Canada's June 17 First Oral Statement, para. 120; Canada's First Written Submission, para. 277.

[84]*See* Slocan's July 23, 2001 Section B, C, & D Questionnaire Response, p. C-37 (Exhibit US-71).

[85]*See* Panel Report, *Egypt–Steel Rebar*, para. 7.3 ("[W]here opportunities have been provided by the authority for interested parties to submit into the record information and arguments on [a] point, the decision by an interested party not to make such submissions is its own responsibility, and not that of the investigating authority, and cannot later be reversed by a WTO dispute settlement panel.").

82. Please explain how DOC treated Slocan's futures contracts revenues at issue before the Panel in the various stages of the investigation, including whether or not any form of adjustment was granted in DOC's Final Determination.

139. In its Preliminary Determination, Commerce found Slocan's futures contracts to be a type of investment activity. It did not grant an adjustment for direct selling expenses.[86] In a memorandum issued at the time of its Preliminary Determination, Commerce explained,

> In the field DIRSELU2 in the U.S. sales database, Slocan has reported the profit or loss associated with sales made on the futures market. We concluded that this is an investment revenue, and should not be treated as a sales specific deduction/addition.[87]

140. Also, in its Preliminary Determination, Commerce treated the futures trading profits as an offset to financial expenses.[88] Following verification and further argument, Commerce reversed its treatment of the profits as an offset to financial expenses.[89]

141. Slocan disagreed with Commerce's Preliminary Determination regarding direct selling expenses, and argued the issue further in its briefs.[90] Also, Commerce's verifications determined that Slocan used futures contracts to hedge its sales in general, rather than specific transactions.[91]

142. In its case brief in response to the Preliminary Determination, Slocan argued that Commerce disallowed "an integral part of Slocan's U.S. selling activity" by treating profits earned on futures contracts as investment revenue instead of as a selling adjustment.[92] Specifically, Slocan argued that because the company uses the futures market in an effort to protect itself from future downward price trends, Commerce was mistaken in believing that Slocan uses the market for strictly speculative purposes. Slocan stated that "since every futures contract entered into by Slocan with the CME [the Chicago Mercantile Exchange] carries with it the obligation to deliver the actual lumber specified in the contract at the time and place specified, Slocan at all times keeps track of the contracts in relation to its other selling activity, in order to be sure of having the ability to deliver the 'underlying Physical' out of its own inventory." Slocan also cited to Commerce's verification report to support its argument.[93]

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[86]Preliminary Determination at 56,069 (Exhibit CDA-11).

[87]DOC Analysis Memorandum for Slocan Forest Products, Ltd. at 7, October 30, 2001 (Exhibit CDA-116).

[88]Preliminary Determination at 56,069 (Exhibit CDA-11).

[89]Final Determination, Comment 21 (Exhibit CDA-2).

[90]Final Determination, Comment 21 (Exhibit CDA-2); Slocan Case Brief at 69-72 (Exhibit US-72).

[91] *See* Cost Verification Report, Memorandum from Michael P. Harrison to Neal M. Halper, February 21, 2002, p. 26 (Exhibit CDA-118).

[92]Slocan Case Brief at 71 (Exhibit US-72).

[93]Final Determination, Comment 21 (Exhibit CDA-2); Slocan Case Brief at 71 (Exhibit US-72).

143. Slocan argued that "the futures profits are more appropriately treated as short-term investments" and should be treated as an offset to the company's financial expenses. Slocan argued that this situation is "unique from previous situations in which the Department has disallowed investment income on the grounds that the income is not related to the operations of the company," because this income is not generated by investment; rather, this income results from Slocan's "regular lumber sales philosophy."[94]

Commerce concluded:

> **Department's Position**: Slocan's sales on the Chicago Mercantile Exchange (CME) can be divided into two categories: those that result in the shipment of subject merchandise, and those that do not. Any sales of subject merchandise that occurred during the POI as a result of a futures contract have been included in Slocan's reported sales list. However, we have not included in our analysis profits on the sale of futures contracts that did not result in the shipment of subject merchandise. Such profit is realized from Slocan's position on the CME and as a producer of softwood lumber, but not from its actual sale of subject merchandise.
>
> We also have not applied these profits as an offset to Slocan's direct selling expenses. Section 773(a)(6)(C)(iii) of the Act directs the Department to make circumstance of sales adjustments only for direct selling expenses and assumed expenses. Section 351.410(c) defines direct selling expenses as "expenses . . . that result from and bear a direct relationship to the particular sale in question." Accordingly, where no sale of subject merchandise occurred, there can be no circumstance of sale adjustment for direct selling expenses.
>
> Slocan suggests that as an alternative, the Department apply the profits as an offset to Slocan's financial expenses. In support of this argument, Slocan disputes the Department's statement in its preliminary determination calculation memo that these profits are "investment revenues" by stating that Slocan is engaging in hedging rather then speculative activity, and that sales on the futures market are integral parts of the company's normal sales and distribution process. While we agree that Slocan's lumber futures hedging activity is related to its core business of selling lumber as opposed to speculative investment activity, it is for this very reason that we disagree that the futures contracts are related to Slocan's financing activity. As such, the futures profits should not be used to offset the company's interest expense.[95]

[94] Final Determination, Comment 21 (Exhibit CDA-2); Slocan Case Brief at 72 (Exhibit US-72).
[95] Final Determination, Comment 21 (Exhibit CDA-2).

144. Accordingly, having heard the parties' arguments, verified the evidence, and evaluated the record for the Final Determination, Commerce did not accept either of Slocan's proposed adjustments.

> **83. The Panel notes the following statement contained in para. 249 of the US First Written Submission:**
>
> > **"[t]he adjustment that Canada claims should have been made here is an adjustment for conditions and terms of sale."**
>
> **On which basis does the US conclude that the adjustment that Canada claims, "should have been made here", is an adjustment for conditions and terms of sale?**

145. The basis for the quoted statement is Slocan's request for an offset to direct selling expenses for sales of U.S. lumber.[96] An adjustment for direct selling expenses, by definition, is a type of adjustment for differences in conditions and terms of sale.[97]

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[96]Final Determination, Comment 21 (Exhibit CDA-2) ("[W]here no sale of subject merchandise occurred, there can be no circumstance of sale adjustment for direct expenses.").

[97]Differences in circumstances of sale are the U.S. law equivalent to the AD Agreement's reference to differences in conditions and terms of sale. Under U.S. law, an adjustment for direct selling expenses is a sub-category of an adjustment for differences in circumstances of sale. Section 773(a)(6)(C)(iii) of the Tariff Act of 1930 (Exhibit CDA-7) deals with circumstances of sales adjustments:

> (6) Adjustments. The price described in paragraph (1)(B) shall be...
> (C) increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to
> ... (iii) other *differences in the circumstances of sale*. (Emphasis supplied).

The specific circumstances of sale adjustment that Slocan requested was for profits from futures contracts to be used to offset "direct selling expenses." Commerce's regulations, 19 CFR Section 351.410(c), define "direct selling expenses":

> (c) Direct selling expenses. "Direct selling expenses" are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear *a direct relationship to, the particular sale in question*. (Emphasis supplied).

84. Could the US indicate whether DOC examined if the requested adjustment was justified under the following language of Article 2.4: "and any other differences which are also demonstrated to affect price comparability"? If so, what were DOC's conclusions? Please identify the relevant documents on the record.

146. Commerce examined only those bases for adjustment that Slocan requested. The quoted text from Article 2.4 presumes a request for such an adjustment, as well as a demonstration of effect on price comparability. Absent both a request and a demonstration, there is nothing to examine. Article 2.4 does not require an investigating authority, independent of evidence and argument by an interested party, to find bases for a price adjustment. The only attempt Slocan made at a demonstration of effect on price comparability was with respect to direct selling expense. For the reasons described in our response to Question 81, Commerce found no effect on price comparability to have been "demonstrated" in this case.