UNITED STATES – COUNTERVAILING DUTY MEASURES ON SOFTWOOD LUMBER FROM CANADA

(DS533)

OPENING STATEMENT OF THE UNITED STATES OF AMERICA ON THE SECOND DAY OF THE FIRST SUBSTANTIVE MEETING OF THE PANEL

February 27, 2019

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Canada – Aircraft (AB)	Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, adopted 20 August 1999
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US – Carbon Steel (India) (AB)	Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014
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US – Countervailing Measures (China) (AB)	Appellate Body Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R, adopted 16 January 2015
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US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) (Panel)	Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS212/RW, adopted 27 September 2005

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US – Hot-Rolled Steel (AB)	Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001
US – Large Civil Aircraft (Second Complaint) (AB)	Appellate Body Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/AB/R, adopted 23 March 2012
US – Softwood Lumber IV (Panel)	Panel Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/R and Corr.1, adopted 17 February 2004, as modified by Appellate Body Report WT/DS257/AB/R
US – Softwood Lumber VI (Article 21.5 – Canada) (AB)	Appellate Body Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS277/AB/RW, adopted 9 May 2006
US – Supercalendered Paper (Panel)	Panel Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/R and Add. 1, circulated 5 July 2018

Madame Chairperson, members of the Panel:

1. Good morning. We will get right into the issues on today's agenda.

I. CANADA'S "ADDITIONAL REMUNERATION" ARGUMENTS SHOULD BE REJECTED

2. With respect to the benefit calculation for Alberta, Ontario, New Brunswick, and Quebec, Canada's arguments regarding what it calls "additional remuneration" should be rejected.[1] These arguments should be seen for what they are: a confused attempt (or perhaps an attempt to confuse) to redefine the benefit amount contrary to the terms of Articles 1.1(b) and 14(d) of the SCM Agreement.[2] Canada misreads the Appellate Body report in *US – Carbon Steel (India)* to argue that a subsidy recipient's general costs of doing business should offset the amount of benefit conferred by the subsidies received.[3] But the Appellate Body report says no such thing. It is important to clarify here at the outset that the proposition upon which Canada has built its case for these adjustments is simply one of its own invention, and not, as Canada has presented it, the findings or reasoning of the Appellate Body report.

3. When Canada quotes from the report in *US – Carbon Steel (India)* to refer to "the *full cost to the recipient*,"[4] Canada is referring to a dispute in which India challenged a provision of the USDOC's[5] benchmark regulation, on an "as such" basis, because the USDOC regulation expresses a preference for delivered prices to be used as the benchmark.[6] India argued, in that dispute, that the benchmark should be based on an *ex works* price.[7] But the Appellate Body rejected India's argument because, given the reference to "transportation" in Article 14(d), the use of an *ex works* price as a benchmark would fail to capture the full extent of the benefit – in other words, it would fail to capture the full cost to the recipient <u>in terms of what the recipient would have had to pay</u> to obtain the input under market conditions.[8] The Appellate Body's reference to "the full cost to the recipient" does not suggest (nor does it even contemplate) Canada's notion that the benefit amount should be discounted by so-called "additional

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[1] *See* Canada's First Written Submission, paras. 863-918.

[2] *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

[3] *See* Canada's First Written Submission, para. 863 (quoting *US – Carbon Steel (India) (AB)*, para. 4.245); *see also* Canada's First Written Submission, paras. 42 and 869 (same)

[4] Canada's First Written Submission, para. 863 (quoting *US – Carbon Steel (India) (AB)*, para. 4.245) (Canada's emphasis).

[5] U.S. Department of Commerce ("USDOC").

[6] *See US – Carbon Steel (India) (AB)*, paras. 4.245-4.251.

[7] *See US – Carbon Steel (India) (AB)*, para. 4.248.

[8] *See US – Carbon Steel (India) (AB)*, paras. 4.246 ("we find it significant that the term 'transportation' is explicitly listed among the 'prevailing market conditions' illustratively identified in the second sentence of Article 14(d) of the SCM Agreement. To us, this confirms that the costs associated with the transportation of the good in question is a factor that must be accounted for" and "the use of *ex works* prices for the purpose of a benefit comparison under Article 14(d) of the SCM Agreement would not capture the full cost to the recipient of receiving the government-provided good in question, and would therefore fail to assess whether the financial contribution at issue makes the recipient better off than it would otherwise have been absent that contribution.").

remuneration."[9] Moreover, the reason why the report places so much of the emphasis in that discussion on costs "to the recipient" is that the Appellate Body was also explaining that "an understanding of 'prevailing market conditions' as referring solely to the conditions set by the providers of the good" must be rejected.[10] The Appellate Body explained that that understanding must be rejected because it cannot be reconciled with "the well-established proposition that a financial contribution provided by a government confers a benefit if it makes the *recipient* 'better off' than it would otherwise have been absent that contribution."[11]

4. When these statements are read in context, it is clear that Canada has construed the Appellate Body's finding in *US – Carbon Steel (India)* in a manner directly contrary to what the Appellate Body actually found.[12] And, as this misunderstanding is the premise for Canada's entire argument regarding "additional remuneration" and adjustments, there is no basis to further entertain Canada's argument, and it should be rejected in its entirety on these grounds.

5. Nonetheless, there are further grounds for rejecting Canada's arguments.

6. To begin with, it is important to keep in mind what the USDOC actually compared when it did the benefit analysis.[13] On one side, the USDOC took the actual prices that Canfor, Tolko, West Fraser, Resolute, and JDIL paid to the government for stumpage.[14] And to be clear, these are the actual prices paid for stumpage – that is, for stumpage alone and nothing else – as each of these respondent companies reported to the USDOC, without adjustments.[15] And on the other side, the USDOC took the actual prices paid for stumpage in Nova Scotia – that is, the prices paid for stumpage alone and nothing else.[16] On this basis, the USDOC compared stumpage prices to stumpage prices.

7. Now, despite this stumpage-to-stumpage comparison, Canada argues that all kinds of other costs should be added to one side of the comparison.[17] These other costs would be in addition to and separate from the prices that respondents reported having paid for stumpage.[18]

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[9] *See, e.g.*, Canada's First Written Submission, paras. 863-869.

[10] *See US – Carbon Steel (India) (AB)*, para. 4.245 (explaining that "an understanding of the term 'prevailing market conditions' as referring solely to the conditions set by the providers of the good in question stands in tension with the well-established proposition that a financial contribution provided by a government confers a benefit if it makes the *recipient* 'better off' than it would otherwise have been absent that contribution.") (emphasis added) (citing *Canada – Aircraft (AB)*, para. 157).

[11] *US – Carbon Steel (India) (AB)*, para. 4.245 (quoting *Canada – Aircraft (AB)*, para. 157) (emphasis original).

[12] *See, e.g.*, Canada's First Written Submission, paras. 863-869.

[13] *See* Lumber Final I&D Memo, pp. 135-139 (Exhibit CAN-010).

[14] Lumber Final I&D Memo, p. 139 (Exhibit CAN-010).

[15] Lumber Final I&D Memo, p. 139 (Exhibit CAN-010).

[16] Lumber Final I&D Memo, p. 139 (Exhibit CAN-010).

[17] *See, e.g.*, Canada's First Written Submission, para. 869.

[18] *See* Canada's First Written Submission, paras. 880-886 (describing the following as "mandatory charges" that are in addition to the stumpage price: "Alberta FRIAA timber dues and Holding and Protection charges, and Québec's TSG annual royalty and protection costs"); *see* Canada's First Written Submission, para. 888 (describing the

Canada's argument is that, instead of comparing a stumpage price to a stumpage price, the USDOC should have compared a stumpage price, plus other costs of doing business, to a stumpage price that does not include such other costs of doing business. Canada's argument should be rejected because it would distort a comparison of like prices, and render it a comparison of unlike prices.

8. Indeed, even by its own terms, Canada's argument may be rejected as internally inconsistent. In its first written submission, Canada states that "additional remuneration is an integral component of the overall stumpage price."[19] But this is the error in Canada's claim – how can it be additional yet integral?

9. The so-called "mandatory charges" and "in-kind" costs that Canada describes would certainly be additional in the sense that they are separate from, and reported separately from, the stumpage prices that are actually the subject of the subsidy investigation.[20] But this makes the USDOC's determination to reject the adjustments all the more justified. Where the respondents' reported stumpage price (*i.e.*, the allegedly subsidized price) does not include certain costs, and the benchmark price likewise does not include those costs, it would not be accurate to adjust the respondents' reported stumpage price.

10. There is no support in the underlying record for Canada's argument to include additional charges not included in respondents' reported stumpage prices and not included in Nova Scotia's "'pure' stumpage price that reflects solely the costs buyers incurred for the right to harvest individual trees."[21] As explained in the U.S. first written submission, the USDOC found that these additional expenses were not directly related to stumpage prices, that they were billed as separate items, and that no record evidence indicated that any such additional items were included within the Nova Scotia benchmark prices (despite Canada implying otherwise).[22]

11. To the extent that Canada argues that provincial governments in Alberta and Quebec take extraneous costs into account when setting provincial stumpage rates,[23] the record merely reflects that these two provinces collect information regarding costs in those provinces, not that

following as "in-kind" costs that are in addition to the stumpage price: "basic reforestation and silviculture costs; road planning, construction, maintenance, and reclamation costs; forest management and inventory costs (including First Nations and Métis relations); and forest protection, fire, insect and disease prevention, and environmental protection costs."); *see generally* Canada's First Written Submission, paras. 889-918.

[19] Canada's First Written Submission, para. 869 (emphasis added).

[20] *See* Canada's First Written Submission, paras. 880-886 (describing the following as "mandatory charges" that are in addition to the stumpage price: "Alberta FRIAA timber dues and Holding and Protection charges, and Québec's TSG annual royalty and protection costs"); *see* Canada's First Written Submission, para. 888 (describing the following as "in-kind" costs that are in addition to the stumpage price: "basic reforestation and silviculture costs; road planning, construction, maintenance, and reclamation costs; forest management and inventory costs (including First Nations and Métis relations); and forest protection, fire, insect and disease prevention, and environmental protection costs."); *see generally* Canada's First Written Submission, paras. 889-918.

[21] Lumber Final I&D Memo, p. 138 (Exhibit CAN-010).

[22] *See* Lumber Final I&D Memo, p. 136 (Exhibit CAN-010); *see* Canada's First Written Submission, paras. 876-878.

[23] Canada's First Written Submission, para. 875.

they took into consideration the survey results in setting stumpage prices.[24] More importantly, Canada errs when it relies on whether the province would be "relieve[d] . . . of costs associated with maintaining, rehabilitating and administering Crown forests, which would otherwise be borne by the Provinces and recovered through higher administered prices."[25] The costs that provincial governments do or do not incur when delegating these "various activities to forestry companies"[26] are not the relevant inquiry under Article 14(d), and the Appellate Body has been clear on this point.[27]

12. Canada's arguments further rely upon prior disputes that are legally and factually distinct from the current dispute and the underlying investigation.[28] Canada points to the panel report in *US – Softwood Lumber IV* for the proposition that "[t]he price to be paid for the timber, in addition to the volumetric stumpage charge for the trees harvested, consists of various forest management operations and other in-kind costs relating to road-building and silviculture for example."[29] However, the panel in that case made that statement in connection with its evaluation of whether stumpage agreements themselves constituted a financial contribution under Article 1.1(a) in the form of the provision of a good, not whether these considerations should be reflected in a benefit calculation under Article 14(d).[30]

13. With respect to the facts of prior lumber investigations and the treatment of additional costs in those proceedings, the USDOC made clear in the current investigation why that analysis was different.[31] For example, in the prior investigation, the USDOC relied on a downstream benchmark derived from log prices. The additional costs that Canada is concerned with were, in that scenario, relevant to constructing a stumpage price using downstream log prices as a starting point. In that analysis, certain of the post-harvesting activities that Canada refers to are relevant to deriving a benchmark. Likewise for example, prior investigations involved an aggregate investigation (where record information came from the government's responses), rather than a company-specific investigation like this one. But where, as here, the USDOC is comparing a stumpage price to a stumpage price, the additional and downstream costs are not required for the comparison under these facts. By the same token, the USDOC did make adjustments in the current investigation with respect to British Colombia for this very reason. Canada's argument that the USDOC acted arbitrarily in declining to make adjustments for stumpage comparisons

[24] *See generally* Exhibit CAN-097 and Exhibit CAN-177.

[25] *See* Canada's First Written Submission, para. 887 ("The Provinces delegate various activities to forestry companies. This relieves the Provinces of costs associated with maintaining, rehabilitating and administering Crown forests, which would otherwise be borne by the Provinces and recovered through higher administered prices.") (emphasis added).

[26] Canada's First Written Submission, para. 887.

[27] *See US – Carbon Steel (India) (AB)*, para. 4.245 (quoting *Canada – Aircraft (AB)*, para. 157).

[28] *See* Canada's First Written Submission, paras. 870-873.

[29] *US – Softwood Lumber IV (Panel)*, para. 7.15; Canada's First Written Submission, para. 870 (discussing *US – Softwood Lumber IV (Panel)*).

[30] *US – Softwood Lumber IV (Panel)*, paras. 7.9-7.30.

[31] *See* Lumber Final I&D Memo, pp. 127-139 (Exhibit CAN-010).

when it accepted certain adjustments for log-derived benchmarks ignores the clear differences in those two approaches.

14. Accordingly, Canada has failed to show that the USDOC acted in a manner inconsistent with Article 14(d) because an objective and unbiased investigating authority could have determined not to adjust the Canadian respondents' stumpage purchase prices where the requested adjustments would reflect extraneous costs that are not included in the Nova Scotia stumpage benchmark.

II. THE USDOC'S DETERMINATION NOT TO ADJUST THE WASHINGTON BENCHMARK PRICES

15. Turning to the issue of British Columbia benchmark prices, we have demonstrated in the first U.S. written submission that the USDOC appropriately adjusted the Washington benchmark calculation to account for respondents' specific costs related to accessing, harvesting, and hauling timber, and fulfilling tenure-related obligations, such as silviculture.[32] The USDOC began with delivered log prices as the starting point and, through making these adjustments for the respondents' costs incurred in British Columbia, constructed a benchmark price that reflects the prevailing market conditions in British Columbia.[33] Canada argues that additional adjustments were necessary, but the USDOC considered and explained why each of the proposed adjustments must be rejected.[34]

16. As we have heard, Canada objects to (1) the USDOC's conversion factor for converting prices from a board feet basis to cubic meters;[35] (2) the USDOC's rejection of requested adjustments for timber grade and beetle-killed condition;[36] (3) the USDOC's determination to use species-specific price comparisons, rather than comparing prices on a "stand-as-a-whole" basis;[37] and (4) the USDOC's determination not to adopt the respondents' request for certain

[32] *See* U.S. First Written Submission, paras. 424-471; *see* Lumber Final I&D Memo, pp. 68-75 (Exhibit CAN-010).

[33] *See* Lumber Final I&D Memo, pp. 71-74 (Exhibit CAN-010). These adjustments were comprehensive. *See* Lumber Final I&D Memo, pp. 73-74 (Exhibit CAN-010) (granting adjustments for direct and indirect costs associated with the tenure contract, with accessing timber for harvesting, and with acquiring timber; road, harvest, and hauling costs; reported silviculture and forest management costs; other obligated costs that are required by the Crown in order for the respondents to access and harvest the Crown timber supply, including annual forest rent, waste stumpage charges, and scaling costs; indirect costs or G&A costs the respondents must incur to access and harvest Crown timber where tied to either the respondents' tenure obligations or to expenses relating to accessing, harvesting, or hauling timber to the mills; and an adjustment for cutting rights fees paid by the respondents to harvest Crown timber on the tenure held by another licensee, adjusted by the amount that the respondents must pay to the third-party tenure holder or licensee to best capture the amount of the benefit that is actually conferred upon the respondents).

[34] *See* Lumber Final I&D Memo, pp. 58-76 (Exhibit CAN-010).

[35] *See* Canada's First Written Submission, paras. 632-699; Lumber Final I&D Memo, pp. 58-61 (Comment 19) (Exhibit CAN-010).

[36] *See* Canada's First Written Submission, paras. 700-720; Lumber Final I&D Memo, pp. 64 (Comment 21) and 75-76 (Comment 25) (Exhibit CAN-010).

[37] *See* Canada's First Written Submission, paras. 721-731; Lumber Final I&D Memo, pp. 66-68 (Comment 23) (Exhibit CAN-010).

transportation adjustments.[38] But Canada's request for these adjustments is not supported by an examination of the record evidence upon which the USDOC relied. Canada's characterization (or mischaracterization) of the record evidence on these points calls for careful scrutiny of Canada's assertions and a careful examination of the underlying facts. A review of the USDOC's determination shows that the USDOC provided a reasoned explanation for rejecting each of these proposed adjustments, and Canada's inappropriate attempt to have the Panel reweigh the evidence should be rejected on each of these four points.

A. Conversion Factors

17. With respect to the issue of conversion factors, in this investigation, the USDOC relied upon the only viable conversion factor study on the record: the U.S. Forest Service study.[39] The undisputed facts show that this study was prepared by an impartial government agency in the ordinary course of business years before this investigation.[40] Canada argues that the USDOC did not act objectively when rejecting the volumetric factors in the BC Dual Scale Study to convert between the BC Metric Scale and the Scribner Decimal Scale used for Washington.[41] But in reviewing the available conversion factors, the USDOC determined that the BC Dual Scale Study was not useable because the authors failed to explain a key component of their methodology in their report.[42] The USDOC evaluated the BC Dual Scale Study, and found, in particular, that the authors failed to explain how the limited number of scaling sites they selected (and which comprise the entire basis of the study) could be considered an objective representation of conditions in British Columbia when the only methodology identified in the report for site selection was the "historical knowledge" of the paid consultants.[43]

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[38] *See* Canada's First Written Submission, paras. 732-737; Lumber Final I&D Memo, pp. 68-75 (Comment 24) (Exhibit CAN-010).

[39] *See* Lumber Final I&D Memo, p. 60 (Comment 19) (Exhibit CAN-010) (citing *Lumber IV AR2* IDM, pp. 14, 100 (citing User's Guide for Cubic Measurement, USDA Forest Service Pacific (December 1984), and Henry Spelter, Conversion of Board Feet Scaled Logs to Cubic Meters in Washington State, USDA Forest Service (June 2002)) (collectively, U.S. Forest Service (USFS) Study) (Exhibit CAN-287)).

[40] *See* Lumber Final I&D Memo, p. 60 (Comment 19) (Exhibit CAN-010). To compare the Washington benchmark prices to those the respondents paid to British Columbia, it was necessary for the USDOC to find a conversion factor to translate prices per MBF to prices per cubic meter, as wood volume is measured in Canada in cubic meters pursuant to the BC Metric Scale. *See* Lumber Preliminary Decision Memorandum, p. 53 (Exhibit CAN-008). The BC Metric Scale system involves a broader measure of wood fiber than the Scribner Decimal C scale, because it includes the entire sound wood volume of the log, regardless of whether the wood fiber can be made into lumber or is only suitable for chipping or some other application. GBC QR at Ex. BC-S-183, Jendro & Hart Dual Scale Study at 19 (Dual Scale Study) (Exhibit CAN-020 (BCI)). To bridge between the two systems of measurement, the USDOC utilized the USFS Study's 5.93 cubic meters per MBF conversion factor, which the USDOC applied in *Lumber IV*, and which was based on a 1984 study, as updated in 2002. *See* Lumber Preliminary Decision Memorandum, p. 53 (Exhibit CAN-008) (citing *Lumber IV AR2* IDM, p. 14); Lumber Final I&D Memo, pp. 59-61 (Exhibit CAN-010).

[41] *See* Canada's First Written Submission, paras. 651-99.

[42] Lumber Final I&D Memo, pp. 59-60 (Comment 19) (Exhibit CAN-010).

[43] *See* Lumber Final I&D Memo, pp. 59-61 (Comment 19) (Exhibit CAN-010).

18. The absence of a valid statistical methodology was of particular concern to the USDOC, because the BC Dual Scale Study was commissioned specifically for the investigation.[44] Although Canada attempts to minimize the issue by asserting that the study's results were representative of the range of logs in British Columbia, the record contains no explanation of how the authors evaluated hundreds of scaling sites in the province and ultimately selected just twelve.

19. In contrast, the USDOC explained that because the starting point for constructing the benchmark begins with Washington logs (and ends with making the necessary adjustments to reflect conditions in British Columbia), the accuracy of the calculation would not necessarily be improved by converting Washington logs on the basis of a study that exclusively examined BC timber.[45] Thus, the USDOC explained that it preferred to convert the Washington-priced benchmark in board feet to cubic meters to get a price that "would be based upon cubic meters of the tree in Washington state, not BC."[46] Given that the USDOC proceeded to make the necessary adjustments to the final calculation to reflect the conditions in British Columbia, the USDOC reached a conclusion that any objective and unbiased investigating authority could have reached in declining to instead adopt the study that BC commissioned.[47]

B. Log Quality

20. Canada also argues that the USDOC overstated the quality and value of respondents' timber inputs as a result of differences in the log grading systems between British Columbia and Washington, and the incidence of Mountain Pine Beetle infestation in British Columbia.[48] But the USDOC accounted for timber grade and condition consistent with the information available on the record.[49]

21. Namely, with respect to log grade, the USDOC determined that Washington prices included the full range of relevant logs, including non-sawlog "Utility grade" prices, and, given the unresolved issues with the BC Dual Scale Study, there was no reliable evidence on the record that would warrant an additional upward adjustment for Utility grade logs that respondents requested.[50] This fact does not constitute any error on the part of the investigating authority and Canada cannot show otherwise.

22. Further, with respect to beetle-killed condition, the USDOC found that additional price quotes for beetle-killed timber presented in the BC Dual Scale Study were unreliable for the

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[44] *See* Lumber Final I&D Memo, pp. 59-61 (Comment 19) (Exhibit CAN-010).

[45] *See* Lumber Final I&D Memo, p. 60 (Exhibit CAN-010).

[46] Lumber Final I&D Memo, p. 60 (Exhibit CAN-010).

[47] *See generally* U.S. First Written Submission, paras. 431-441.

[48] *See* Canada's First Written Submission, paras. 703-710 and 711-720.

[49] *See* U.S. First Written Submission, paras. 443-448 and 449-458; Lumber Final I&D Memo, pp. 64 (Comment 21) and 75-76 (Comment 25) (Exhibit CAN-010).

[50] *See* U.S. First Written Submission, paras. 443-448.

reasons we have already explained.[51] More importantly, Canada's assertion that the Washington log prices included only logs that were not beetle-killed is entirely speculative. There was no evidence that the Washington dataset did not already contain prices for beetle-killed timber, because beetle infestation also exists in eastern Washington among the same vulnerable species. Tellingly, Canada urged the USDOC to utilize various price quotes that its own consultants obtained for beetle-killed timber in the U.S. Pacific Northwest region, which includes Washington.[52] Taken together with the other bases for its determination, it would be logical for the USDOC to conclude that the Washington dataset included beetle-killed timber prices as well. Again, it is a conclusion that an objective and unbiased investigating authority could have reached.

C. Stand-as-a-Whole

23. We turn next to Canada's argument that the USDOC was required to take into account that British Columbia sells stumpage on a "stand-as-a-whole" basis, without differentiating by species or grade.[53] As explained, the USDOC's approach to measuring adequacy of remuneration hinged upon a recognition that "the species of a tree is an integral part of the value of the tree."[54] Under the guise of accounting for a "prevailing market condition," Canada states that the USDOC was <u>required</u> to overlook this key product characteristic, the tree's species, because of the means by which British Columbia prices and sells its stumpage. However, the USDOC explained that "[i]f a government chooses to set a price for a whole stand, rather than differentiating by species within a particular stand, that does not change the amount of the benefit conferred for purposes of our analysis."[55] Conducting a timber mark and species-specific analysis is as close to a transaction-specific analysis as the record evidence allows. Moreover, as the USDOC's "market principles" analysis suggests, British Columbia's "stand-as-a-whole" pricing may in itself be inconsistent with market principles, and, as an aspect of the government's financial contribution, may mask the very subsidization that the USDOC's analysis is meant to assess.[56]

D. Transportation

24. Finally, turning to the issue of transportation, there is no merit in Canada's argument that the USDOC was obligated to make adjustments when measuring the adequacy of remuneration for *stumpage* to reflect respondents' higher costs to transport *lumber* to major lumber-consuming markets.[57] There is no basis for such an adjustment under Article 14(d), which refers unambiguously to prevailing market conditions for the good in question, that is, the government-

[51] Lumber Final I&D Memo, p. 64 (Exhibit CAN-010).

[52] *See* Lumber Final I&D Memo, pp. 64, 76 (Exhibit CAN-010).

[53] *See* Canada's First Written Submission, para. 722.

[54] *See* U.S. First Written Submission, paras. 460-465; Lumber Final I&D Memo, p. 68 (Exhibit CAN-010).

[55] Lumber Final I&D Memo, p. 68 (Exhibit CAN-010).

[56] *See* U.S. First Written Submission, paras. 460-465.

[57] *See* Canada's First Written Submission, para. 732.

provided input. Here, the "good or service in question" is standing timber provided by British Columbia, and not the numerous downstream products that may be created after British Columbia has provided standing timber. Canada does not, and cannot, cite any basis for an adjustment for transportation costs of a different good *downstream* from the government-provided input.[58]

25. These arguments and assertions by Canada should ultimately be rejected, with respect to all of the foregoing adjustments that Canada has sought. The USDOC made the necessary adjustments where called for by a reasoned analysis and where supported by reliable record evidence. The questions and continued speculation that Canada relies on fail to establish that the USDOC reached conclusions that could not have been reached by an objective and unbiased investigating authority. Accordingly, Canada's arguments should be rejected.

III. THE USDOC'S DETERMINATION CONCERNING BRITISH COLUMBIA'S AND CANADA'S LOG EXPORT RESTRAINTS

26. The U.S. first written submission demonstrates that Canada's claims that the USDOC improperly investigated and countervailed British Columbia's and Canada's log export restraints lack merit.[59]

27. The USDOC found that official government action compels British Columbia log suppliers to provide a good – logs – to British Columbia consumers, including mill operators. In other words, as contemplated by Article 1.1(a)(1)(iv) of the SCM Agreement, the USDOC found that the Government of British Columbia and the Government of Canada entrusted or directed private bodies to engage in conduct that is described in Article 1.1(a)(1)(iii) of the SCM Agreement (providing goods), and further found that such conduct would normally be vested in the Governments of British Columbia and Canada, and the practice, in no real sense, differs from practices normally followed by governments.

28. Canada asks the Panel to make a categorical determination that, as a legal matter, export restraints simply cannot constitute entrustment or direction. There is no support in the SCM Agreement for Canada's argument. The U.S. first written submission demonstrates that Article 1.1(a)(1) of the SCM Agreement, when properly interpreted, establishes that the concept of entrustment or direction encompasses a range of government actions, including the imposition by the Governments of British Columbia and Canada of log export restraints as a means by which to entrust or direct private log suppliers to carry out the function of providing logs to BC consumers, including mill operators.

29. Canada's legal arguments are flawed, rest on false premises, and rely on prior reports that are inapposite. The implication of Canada's argument is that, in the absence of an explicit command to sell the particular good to a particular purchaser at a particular price, there can never be a finding of entrustment or direction under Article 1.1(a)(1)(iv) of the SCM Agreement. Canada's position is contrary to the correct interpretation of the term "entrusts or directs" that

[58] *See generally* U.S. First Written Submission, paras. 466-469.

[59] *See* U.S. First Written Submission, paras. 528-611.

follows from a proper application of customary rules of interpretation and has already been rejected in numerous prior panel and Appellate Body reports.

30. The U.S. first written submission demonstrates that Canada's reliance on the panel reports in *US – Export Restraints* and *US – Countervailing Measures (China)* is misplaced.[60] The statements in the *US – Export Restraints* panel report to which Canada refers are *obiter dicta* concerning a hypothetical measure. The legal reasoning underlying that panel's statements has been thoroughly repudiated by other panel and Appellate Body reports. And, critically, that panel's interpretation of Article 1.1(a)(1)(iv) of the SCM Agreement is contrary to customary rules of interpretation. The *US – Countervailing Measures (China)* panel expressly limited its findings to the facts before it, and those facts differ from the facts in the underlying investigation. So, those panel reports simply provide no support for Canada's arguments.

31. The ample record evidence that was before the USDOC supports the USDOC's determination of entrustment or direction and supports the USDOC's determination that providing logs is a type of function that would normally be vested in the Governments of British Columbia and Canada. After examining the record evidence, the USDOC found that the log export restraints require in-province processing of wood fiber, subject to exemption only if British Columbian timber processing facilities do not need or cannot economically use the input material, or if the material would otherwise be wasted. On this basis, the USDOC found that official government action compels suppliers of BC logs to supply to BC customers.

32. This is not a case where the government's intent to assist downstream industries is hidden or implicit, and discoverable only upon studying the effects of the policies. Rather, the express purpose of Canada's and British Columbia's laws is that private log suppliers will provide to in-province mill operators all the input material that mills need and/or can economically use. Specifically, the laws single out "timber processing facilities in British Columbia,"[61] and prioritize their supply, to the exclusion of consumers in export markets. Therefore, the USDOC correctly concluded that log harvesters are required to "to divert to mill operators some volume of logs that could otherwise be exported."[62]

33. The USDOC also found that logs are harvested from standing timber in forests, and the province of British Columbia controls over 94 percent of all forest land within its boundaries, which demonstrates its near total control over the timber supply. Where the government owns a resource, such as standing timber, the exploitation of that resource necessarily is, for that government, a function that would be vested in that government.

34. It is clear from a review of the USDOC's preliminary decision memorandum and final issues and decision memorandum that the USDOC's explanation of its determination is

[60] *See*, *e.g.*, U.S. First Written Submission, paras. 573-589.

[61] Lumber Preliminary Decision Memorandum, p. 58 (Exhibit CAN-008).

[62] Lumber Preliminary Decision Memorandum, p. 61 (Exhibit CAN-008). *See also* Lumber Final I&D Memo, p. 155 (Exhibit CAN-010).

"reasoned and adequate,"[63] the USDOC's determination, which is based on the totality of information on the administrative record,[64] is supported by ample evidence, and any unbiased and objective investigating authority, examining the same evidence, could reach the same conclusions that the USDOC reached.[65] Canada's claim to the contrary lacks any foundation.

35. Additionally, Canada's flawed claims regarding the USDOC's initiation of a countervailing duty investigation of the log export restraints likewise lack any foundation, because they simply refer to and depend upon Canada's flawed arguments that the log export restraints do not result in a financial contribution as a matter of law or fact.

IV. THE USDOC'S DETERMINATION REGARDING GRANTS PROVIDED FOR SILVICULTURE AND FOREST MANAGEMENT

A. New Brunswick and Quebec Each Provided Grants for Silviculture and Forest Management

36. As discussed in the U.S. first written submission, a subsidy is deemed to exist if "there is a financial contribution by a government or any public body within the territory of a Member"[66] and "a benefit is thereby conferred."[67] Article 1.1(a)(1)(i) of the SCM Agreement indicates that a financial contribution exists where "a government practice involves a direct transfer of funds."[68]

37. The Government of New Brunswick obligated JDIL to perform silviculture and forest management as a condition for providing JDIL access to Crown stumpage. New Brunswick subsequently issued payments to JDIL for some of the expenses associated with the silviculture. These payments constitute financial contributions in the form of direct transfers of funds.[69]

38. The Government of Quebec likewise obligated Resolute to harvest certain timber stands using a partial cutting technique as a condition for providing Resolute access to Crown

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[63] *US – Softwood Lumber VI (Article 21.5 – Canada) (AB)*, para. 97 (quoting *US – Hot-Rolled Steel (AB)*, para. 193).

[64] *See, e.g.*, Lumber Preliminary Decision Memorandum, p. 60 ("Based on the record evidence, we preliminarily find that the BC log export restraints result in a financial contribution by means of entrustment or direction of private entities…, in that official governmental action compels suppliers of BC logs to supply to BC consumers, including mill operators." (underline added)) (Exhibit CAN-008); Lumber Final I&D Memo, pp. 139 (noting its consideration of record information in its "totality"), 145 ("record evidence supports our preliminary determination") (Exhibit CAN-010).

[65] *See, e.g., US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) (Panel)*, paras. 7.78-7.83; *US – Supercalendered Paper (Panel)*, paras. 7.40, 7.150, 7.202; *US – Coated Paper (Indonesia) (Panel)*, paras. 7.61, 7.83; *US – Countervailing Measures (China) (Panel)*, para. 7.382; *China – GOES (Panel)*, paras. 7.51-7.52; *EC – Countervailing Measures on DRAM Chips (Panel)*, paras. 7.335, 7.373.

[66] SCM Agreement, Art. 1.1(a)(1) (a government or any public body within the territory of a Member is referred to in the SCM Agreement as "government").

[67] SCM Agreement, Art. 1.1(b).

[68] SCM Agreement, Art. 1.1(a)(1)(i).

[69] U.S. First Written Submission, paras. 621-627.

stumpage. Quebec subsequently issued payments to Resolute for some of the expenses associated with the silviculture. These payments constitute financial contributions in the form of direct transfers of funds.[70]

39. Canada introduces before the Panel a fictional version of events in which it alleges that, notwithstanding overwhelming evidence to contrary, New Brunswick and Quebec each decided to purchase silviculture from JDIL and Resolute, and the payments subsequently issued are the consideration that JDIL and Resolute received in return for such purchases.

40. The dictionary defines the term "purchase," in part, as "the action or an act of buying."[71]

41. The Government of New Brunswick did not offer to buy silviculture from JDIL. It obligated JDIL to provide silviculture as part of JDIL's purchase of standing timber from New Brunswick. As a licensee, JDIL was legally responsible for all expenses related to silviculture and forest management on Crown lands.

42. JDIL later received a grant from New Brunswick that alleviated the costs associated with silviculture, but that completely separate transaction did not retroactively transmute JDIL's legal obligation to satisfy silviculture requirements into an act of buying by New Brunswick. There was no exchange of rights and obligations relative to this separate transaction, because JDIL was fully obligated to satisfy silviculture requirements as part of its agreement to buy Crown stumpage.[72]

43. Likewise, the Government of Quebec did not offer to buy silviculture from Resolute. It obligated Resolute to use a partial cutting technique as part of Resolute's purchase of standing timber from Quebec. As a timber supply guarantee holder, Resolute was legally responsible for the added expenses associated with using a partial cutting technique.

44. Resolute later received a grant from Quebec that partially alleviated the costs associated with using a partial cutting technique, but this completely separate transaction did not retroactively transmute Resolute's legal obligation to use this technique into an act of buying by Quebec. There was no exchange of rights and obligations relative to this separate transaction, because Resolute was fully obligated to use a partial cutting technique as part of its agreement to buy Crown stumpage.[73]

45. The USDOC's conclusion that the payments for silviculture constituted financial contributions in the form of grants under Article 1.1(a)(1)(i) of the SCM Agreement is one an unbiased and objective investigating authority could have reached in light of the facts and

[70] U.S. First Written Submission, paras. 628-632.

[71] *New Shorter Oxford English Dictionary*, L. Brown (ed.) (Clarendon Press, 1993, 4th ed.), Volume 2, p. 2418.

[72] U.S. First Written Submission, paras. 636-643.

[73] U.S. First Written Submission, paras. 644-648.

arguments before it. None of Canada's arguments show that the USDOC's determinations involving these grants were inconsistent with Article 1.1(a)(1)(i).

B. The Grants for Silviculture and Forest Management Conferred a Benefit

46. A "benefit" arises when the recipient has received from a financial contribution something that makes the recipient better off than it would otherwise have been absent that financial contribution. Prior panels have reasoned that, "where a subsidy takes the form of a grant, the amount of the financial contribution and the amount of the benefit are the same."[74]

47. New Brunswick and Quebec provided funds that would not have otherwise been received by JDIL and by Resolute, respectively, which offset the costs these recipient companies incurred for legally-obligated silviculture. Given that these payments were financial contributions in the form of grants, the USDOC correctly determined that the amount of the benefit conferred equaled the full amount of the grants provided.[75]

48. The fact that the grants did not cover all of the expenses of the recipient companies does not negate, as Canada alleges, the benefits they conferred. Any amount of financial assistance that alleviated any of the costs incurred by JDIL and Resolute in performing legally-required silviculture conferred a benefit on these companies.[76]

49. The USDOC's conclusions that the grants provided by New Brunswick and Quebec conferred a benefit on the recipients in the amount of the grants is one an unbiased and objective investigating authority could have reached in light of the facts and arguments before it. None of Canada's arguments show that the USDOC's determinations regarding these grants were inconsistent with Article 1.1(b) or Article 14 of the SCM Agreement.

V. THE USDOC'S DETERMINATION CONCERNING THE BENEFIT TO PRODUCERS OF ELECTRICITY

A. BC Hydro's and Hydro-Quebec's Purchases of Electricity

50. As just discussed, a "benefit" exists where the financial contribution provides an advantage to the recipient, making the recipient better off than it would otherwise have been absent that financial contribution.

51. BC Hydro purchased electricity from Tolko and West Fraser and sold electricity to Tolko and West Fraser. BC Hydro paid Tolko and West Fraser more for the electricity it purchased from them than Tolko and West Fraser paid for the electricity they purchased from BC Hydro. BC Hydro's purchase of electricity from Tolko and West Fraser conferred a benefit on Tolko and

[74] *EC – Large Civil Aircraft (Panel)*, para. 7.1969, footnote 5724.

[75] U.S. First Written Submission, paras. 657-667.

[76] U.S. First Written Submission, paras. 660, 663.

West Fraser, because BC Hydro purchased electricity from these companies for more than adequate remuneration.[77]

52. Hydro-Quebec likewise purchased electricity from Resolute and sold electricity to Resolute. Hydro-Quebec paid Resolute more for the electricity it purchased from Resolute than Resolute paid for the electricity it purchased from Hydro-Quebec. Hydro-Quebec's purchase of electricity from Resolute conferred a benefit on Resolute, because Hydro-Quebec purchased electricity from Resolute for more than adequate remuneration.[78]

53. Canada asks the Panel to ignore the fact that BC Hydro and Hydro-Quebec purchased electricity from the recipient companies for more than they sold electricity to these companies. According to Canada, the USDOC should have determined the adequacy of remuneration with respect to this purchase of electricity by comparing the remuneration against itself, or against markets different than the electricity market at issue.

54. Canada's argument rests on the false premise that the electricity BC Hydro and Hydro-Quebec purchased differed significantly from the electricity they sold. The evidence of record demonstrated the exact opposite.

55. The evidence demonstrated that BC Hydro considered the electricity it purchased from Tolko and West Fraser, and Hydro-Quebec considered the electricity it purchased from Resolute, completely substitutable with the electricity it supplied.[79]

56. The evidence also demonstrated that Tolko and West Fraser considered the electricity they sold to BC Hydro, and Resolute considered the electricity that it sold to Hydro-Quebec, completely substitutable with the electricity they purchased.[80]

57. It is clear from the record that the price of electricity that BC Hydro charged Tolko and West Fraser, and the price of electricity that Hydro-Quebec charged Resolute, represented the benchmarks that best reflected the "benefit-to-the-recipient" standard endorsed by Article 14 of the SCM Agreement, because the provincial utilities both purchased electricity from, and sold electricity to, the recipient companies.

58. As the USDOC observed in its final determination, "if a government provides a good to a company for three dollars and then purchases the same good from the company for ten dollars, we cannot see how under the 'benefit-to-the-recipient' standard that … the benefit is anything other than seven dollars."[81]

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[77] U.S. First Written Submission, paras. 674-679.

[78] U.S. First Written Submission, paras. 687-691.

[79] U.S. First Written Submission, paras. 683 and 694.

[80] U.S. First Written Submission, paras. 683 and 695.

[81] Lumber Final I&D Memo, p. 166 (Exhibit CAN-010).

59. Canada has failed to establish that the United States acted inconsistently with its obligations under Articles 1.1(b) and 14(d) of the SCM Agreement. The USDOC's determinations that BC Hydro's purchase of electricity conferred a benefit on Tolko and West Fraser, and Hydro-Quebec's purchase of electricity conferred a benefit on Resolute, are determinations that an unbiased and objective investigating authority could have reached.

B. New Brunswick's Energy Credit

60. A financial contribution exists where "government revenue that is otherwise due is foregone or not collected."[82]

61. Under the LIREPP,[83] NB Power provides energy credits that appear on the electricity bills of participating customers "as a credit applicable to their total electricity charges."[84] JDIL, through its Lake Utopia Paper Division, received benefits under the LIREPP during the period of investigation.

62. Specifically, NB Power applied the Net LIREPP credits to the monthly electricity bill of Irving Paper Limited. Irving Paper Limited transferred some of the credit to JDIL's Lake Utopia Paper Division. The Net LIREPP credits reduced the monthly electricity bills of the participating Irving Companies (including JDIL).[85]

63. The amount of electricity that NB Power purchased from the participating Irving Companies is immaterial to the Net LIREPP adjustment credit that appeared on the monthly electricity bills of the participating Irving Companies. NB Power first determines the Net LIREPP credit it wants to give to large industrial customers. NB Power then works backwards to build up to that credit through a series of renewable energy power purchases and sales and additional credits. As a result, the Net LIREPP credit that NB Power provided to the participating Irving Companies is not tied to the amount of renewable energy that NB Power purchased from the Irving Companies, nor is it tied to the amount of electricity that NB Power sold to the Irving Companies.[86]

64. Canada has failed to establish that the USDOC's benefit calculation for the LIREPP is inconsistent with Articles 1.1(a)(1)(ii), 1.1(b), and 14(d) of the SCM Agreement. The revenue foregone by New Brunswick as a result of the Net LIREPP credit is the monies that participating Irving Companies (including JDIL) did not spend on the electricity bill they received from NB Power. The Net LIREPP credit is separate and apart from any purchases of renewable energy by NB Power from a LIREPP participant and simply reduces a participant's electricity payment to NB Power. The credit thereby decreases the amount of NB Power's revenue as a Crown

[82] SCM Agreement, Art. 1.1(a)(1)(ii).

[83] LIREPP stands for Large Industrial Renewable Energy Purchase Program.

[84] Lumber Preliminary Decision Memorandum, p. 80 (Exhibit CAN-008); GNB QR, p. NBI-20 (Exhibit CAN-259 (BCI)).

[85] U.S. First Written Submission, paras. 702-704.

[86] U.S. First Written Submission, paras. 707-709.

corporation and was properly considered by the USDOC as a financial contribution under Article 1.1(a)(1)(ii) of the SCM Agreement in the form of government revenue foregone.

VI. THE USDOC'S DETERMINATION TO TREAT THE ACCA CLASS 29 ASSETS PROGRAM AS *DE JURE* SPECIFIC

65. A subsidy may be subject to countervailing duty measures if it is specific in accordance with the provisions of Article 2.[87] A subsidy is *de jure* specific where limitations on eligibility explicitly favor certain enterprises.[88] A determination of whether a group of enterprises or industries constitute "certain enterprises" can only be made on a case-by-case basis,[89] and although the industries and enterprises must be "known and particularized," they need not be "explicitly identified" for the subsidy to be considered *de jure* specific.[90]

66. The evidence of record indicated that Class 29 assets are expressly limited to machinery and equipment used in manufacturing and processing operations.[91] Based on this evidence, the USDOC concluded that the ACCA Class 29 assets program excluded enterprises and industries engaged in numerous activities from eligibility for a tax deduction under this program.

67. The USDOC further concluded that Canada's *Income Tax Regulations* "favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not."[92] As a result, the USDOC determined "that the ACCA for Class 29 Assets program is *de jure* specific … because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries."[93]

68. Contrary to Canada's argument, a subsidy can be *de jure* specific without explicitly referencing eligible industries or enterprises by name, because an activity-based exclusion limits access to a subsidy to only those particularized enterprises and industries engaged in the activity. As the USDOC observed, the ACCA for Class 29 Assets program "favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not."[94] It is thus nonsensical to assert, as Canada does, that the ACCA Class 29 assets program cannot be *de jure* specific when a limitation is based on an activity.

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[87] SCM Agreement, Art. 1.2.

[88] SCM Agreement, Article 2.1(a) provides as follows: "Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific."

[89] *US – Anti-Dumping and Countervailing Duties (China) (AB)*, para. 373.

[90] *US – Carbon Steel (India) (AB)*, para. 4.365. *See also US – Anti-Dumping and Countervailing Duties (China) (AB)*, para. 373.

[91] U.S. First Written Submission, paras. 746-748.

[92] Lumber Final I&D Memo, p. 199 (Exhibit CAN-010).

[93] Lumber Final I&D Memo, p. 200 (Exhibit CAN-010).

[94] Lumber Final I&D Memo, p. 199 (Exhibit CAN-010).

69. Further, there is no support in the record for Canada's assertion that the ACCA Class 29 assets program should not be considered *de jure* specific because, from a *de facto* standpoint, a company engaged in an excluded activity might be able to gain access to this subsidy through a non-excluded activity. As the USDOC observed, the ACCA Class 29 assets program is *de jure* specific, in part, because "enterprises and industries engaged exclusively in the excluded activities [still] are not eligible for the ACCA for Class 29 Assets program[, including] … enterprises or industries that are engaged exclusively in farming, fishing, construction, or oil or gas extraction, etc. …."[95]

70. Canada's insistence that the USDOC should have conducted a factual quantitative analysis before it determined whether the ACCA Class 29 assets program was *de jure* specific has no legal basis in Articles 2.1(a) and 2.1(b) of the SCM Agreement. A *de jure* specificity analysis requires determining whether, as a matter of law, access to a subsidy is limited by "consideration of legislation or of a granting authority's acts or pronouncements that explicitly limit access to the subsidy."[96] Article 2.1(a) does not require an investigating authority to compare as part of a *de jure* specificity analysis the number of enterprises or industries that are eligible to access a subsidy to those that are not.[97] Such a comparative and quantitative analysis is used to determine whether a subsidy is *de facto* specific. The USDOC was not required to engage in such an analysis because it determined, consistent with Article 2.1(a), that the ACCA Class 29 assets program was *de jure* specific.

71. The evidence of record also supports the USDOC's finding that the eligibility criteria for the Class 29 asset tax benefits are not based on "objective criteria or conditions" within the meaning of Article 2.1(b).[98] The SCM Agreement provides that "[o]bjective criteria or conditions … mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise."[99] Canada's *Income Tax Regulations* explicitly exclude assets that are primarily used for certain activities and by certain enterprises or industries, so the eligibility criteria for access to the ACCA Class 29 assets program are not analogous to the objective criteria described in the SCM Agreement.

72. An examination of the broader legal framework of Canadian tax law does not demonstrate that the USDOC's *de jure* specificity finding is inconsistent with Articles 2.1(a) and 2.1(b) of the SCM Agreement. The legal framework of a subsidy may be relevant for a *de jure* specificity analysis in certain circumstances.[100] However, other provisions of Canada's *Income*

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[95] Lumber Final I&D Memo, pp. 198-199 (Exhibit CAN-010).

[96] *US – Countervailing Measures (China) (AB)*, para. 4.146.

[97] *US – Carbon Steel (India) (AB)*, para. 4.376.

[98] U.S. First Written Submission, paras. 756-757.

[99] SCM Agreement, Art. 2.1(b), footnote 2.

[100] *US – Large Civil Aircraft (Second Complaint) (AB)*, para. 751 (finding the "the chapeau of Article 2.1 makes it clear that the assessment of specificity is framed by the particular subsidy found to exist under Article 1.1" and "the assessment of specificity under Article 2.1 should not examine subsidies that are different from those challenged by the complaining Member.").

Tax Act and *Income Tax Regulations* provide for different financial contributions and benefit amounts and exhibit different criteria for eligibility. Canada has failed to specifically identify any other tax provision to demonstrate that the industries and enterprises that were ineligible to receive benefits under the ACCA Class 29 assets program were able to receive the same subsidy under some other Canadian tax provision. The USDOC correctly determined that the ACCA Class 29 assets program is not rendered non-specific by Canada's broader legal framework for other tax deductions and credits.

VII. CONCLUSION

73. Madame Chairperson, members of the Panel, this concludes the second part of our opening statement. We would be pleased to respond to your questions.