ANNEX B

PARTIES' RESPONSES TO QUESTIONS FROM THE SECOND MEETING

ANNEX B-1

RESPONSES OF CANADA TO QUESTIONS POSED IN THE CONTEXT OF THE SECOND SUBSTANTIVE MEETING OF THE PANEL

(26 August 2003)

A. GENERAL QUESTIONS

To Canada:

> **85. In response to Question 1 of the Panel, Canada restated its claims. The Panel's understanding is that the claims contained in this restatement are the only claims that are before the Panel (Articles 5.2, 5.3, 5.8, 2.6, 2.4, 2.4.2, 2.2.1.1, 2.2.2, 2.2, 1, 9.3, and 18.1 of the *AD Agreement* as well as GATT 1994 Articles VI:1 and VI:2 – sequencing as per Canada's response to Question 1 of the Panel). Could Canada please confirm that the Panel's understanding is correct?**

1. In addition to the provisions of the *Anti-Dumping Agreement* and GATT 1994 cited by the Panel in Question 85, Canada retains its claims based on Article 5.1, Article 5.4 and Article 2.2.1, which were referred to in Canada's written answer to Question 1 from the Panel.

B. ARTICLE 5.2

To Canada:

> **87. The Panel notes that Canada has made a number of allegations on shortcomings of the data in the application in Section II of its Second Oral Statement. In Canada's view, does the examination it claims should have been done by the DOC, require a pre-initiation investigation?**

2. Canada's claims, as detailed in Section II of Canada's Second Oral Statement and Canada's previous submissions, do not require that an investigating authority conduct a pre-initiation investigation.

3. Article 5.3 obligates an investigating authority to examine the accuracy and adequacy of the evidence provided in an application and to determine whether there is sufficient evidence to justify initiating an investigation.

4. Commerce did not properly examine the accuracy and adequacy of the information provided in the Application and did not properly determine, based on the facts before it, that there was sufficient evidence to justify initiating this investigation. The *Anti-Dumping Agreement* requires an objective and unbiased examination and determination in accordance with Article 5.3 prior to initiation.

5. There is an additional obligation that arises prior to initiation in the circumstances of this investigation. Article 5.2 instructs that the "application shall contain such information as is

reasonably available to the applicant" on a number of subjects. The Application in this investigation was both insufficient to justify initiation and did not contain the minimum information that was reasonably available to the Applicant, on prices and the constructed value, including costs of production, of the softwood lumber products at issue.[1]

6. There has been a dispute in this proceeding over whether the investigating authority must ensure that the application contains some, any, or all reasonably available information. This issue is hypothetical. In this case, there was material information readily available that the Applicant withheld and that Commerce, based on information in the Application, knew it withheld.

7. The United States has admitted that the Application contained information indicating that the Applicant International Paper owned Weldwood, a major Canadian producer and exporter of softwood lumber.[2] Therefore, there was information in the Application establishing that actual cost and price information from a major Canadian producer was available.[3] Such cost and price information was not provided in the Application.

8. An objective and unbiased investigating authority, as a part of its examination and determination of the sufficiency of the evidence in the Application in this investigation, would have determined that the Applicant had not provided reasonably available information on prices and costs. As part of its examination prior to initiation of the facts before it, Commerce was aware that the Application did not, in spite of the Applicant's repeated statements to the contrary,[4] contain such information as was reasonably available to the Applicant on prices and costs. The United States has admitted that 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."[5] Therefore, any suggestion by the United States that some sort of elaborate pre-initiation investigation was required to satisfy Canada's claim under Article 5.2[6] is not credible and is an attempt to distract from the facts before the Panel in this proceeding. Based on the Application, Commerce knew that reasonably available information had not been provided; it chose simply to ignore that fact.

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[1] See Article 5.2(iii) of the *Anti-Dumping Agreement*.

[2] US First Answers to Questions, at paras. 12-13; Petition, Exhibit I.B-7, Article from The Vancouver Sun, 23 March 2001 (Exhibit US-62). See also Petition, Vol. 1B, Exhibit 1B-9, Top Canadian Exporters of Softwood Lumber to the United States 2000 (Exhibit CDA-39).

[3] Further, the availability of Weldwood as a source of data was made clear to Commerce five days before publication of the Notice of Initiation in this investigation. See Quebec Lumber Manufacturers Association Letter to DOC (25 April 2001) (Exhibit CDA-50). The Notice of Initiation was published in the Federal Register on 30 April 2001 (*Certain Softwood Lumber Products from Canada*, 66 Fed. Reg. 21,328 (Dep't Commerce 30 April 2001) (initiation) [hereinafter "Initiation Notice"] (Exhibit CDA-9)). Canada also notes that Weldwood provided data and information to Commerce in connection with Lumber Products from Canada [illegible]

90. Please comment on Canada's Second Oral Statement, para. 20 which states that:

> **"[t]he United States, hiding behind the pretence of confidentiality, has not provided this Panel with any information that was before Commerce about the two US surrogate mills. These US mills were at the heart of Commerce's decision to initiate. Canada has not seen, and the Panel still does not have before it, basic information in the hands of the United States, such as the names of the US mills and what Commerce knew about those mills. The United States has responded to Canada's claims with nothing but assertions."**

14. Canada emphasizes four points regarding the issues raised by this question.

15. First, the United States has no reasonable basis for refusing to provide whatever information it has as to the identity of the two US surrogate mills used to model the costs of Quebec producers and any information concerning what Commerce knew, if anything, about the mills prior to initiation. There are mechanisms in this proceeding for keeping information confidential. Trusting in those mechanisms, Canada has provided highly confidential information to the Panel and the United States. There is no basis for the United States to claim that any information about these mills is so sensitive that it cannot be shared with the Panel.

16. Second, the two US surrogate mills used to model the costs of Quebec producers were critical to the decision to initiate. All of the price comparisons indicated that there was no dumping; the initiation was based solely on costs.[10] There were no usable home market prices, nor surrogate prices, from British Columbia, and therefore Commerce could not legally initiate the investigation on the basis of any information in the Application pertaining to British Columbia.[11] With respect to Quebec, there was no cost evidence from any Quebec producer.[12] Instead, the Applicant constructed a surrogate cost for Quebec mills using information from US mills regarding overhead, and labour, electricity and fuel usage factors.[13] Therefore, the validity of the decision to initiate turns largely on whether an objective investigating authority, looking at the facts before it, could properly have determined that the US surrogate mills were representative of Canadian mills, and that the costs of the US surrogate mills were reasonably allocated to the products at issue.

17. Third, it is more than a theoretical possibility that the US surrogate mills are not representative and that using their overhead and "usage factors" skewed the costs alleged in the Application. There is a wide range in performance of US mills in areas of the United States that

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[10] *Ibid*.

[11] Initiation Notice, 66 Fed. Reg. at 21,330 (Exhibit CDA-9). See also Canada's Second Oral Statement, at para. 13; Canada's First Responses to Questions, at para. 33; and Canada's Second Written Submission, at para. 49.

[12] Petition, Exhibit VI.A, Petitioners' Cost Methodology (public version), at 1-2 (Exhibit CDA-134).

[13] See DOC AD Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada, Inv. No. A-122-838, at 8 (Exhibit CDA-10); and Petition, Exhibit VI.A, Petitioners' Cost Methodology (public version), at 1-4 (Exhibit CDA-134). See also Petition, Exhibit VI.C-1 (public version), (Exhibit CDA-135). Column "C" of each of the "Costs of Manufacturing" calculations charts in Exhibit CDA-135 indicates that the "input units required per MBF of lumber" are taken from the two redacted "Certifications" from employees of two US mills that follow the calculations charts. Therefore, the "input units" or usage factors for the components of the cost model, including the "processing costs" component of the model, are derived from some undisclosed combination of the experience of the two US mills. Neither of the "Certifications" provides cost

border Quebec. Some of those mills might be representative of mills in Quebec, but many others were inefficient mills with outdated equipment and substantial operational problems that would have driven up their cost of producing a thousand board feet of lumber.[14] Any constructed normal value based on such mills would be unduly high and would tend to show dumping where there was, in fact, no dumping. Further, the use of such mills to model costs makes it more likely that legitimate home market sales would be improperly rejected as below cost (*i.e.*, not in the ordinary course of trade).

18. The Application itself lists several US mills in Maine that curtailed operations or had layoffs during the relevant time period. For example, Pleasant River Lumber Co. in Dover-Foxcroft, Maine; Moose River Lumber Co. in Jackman, Maine; Georgia Pacific in Woodland, Maine; and J.D. Irving in Ashland, Maine, all experienced curtailments and layoffs.[15] Because of the wide range in the performance of the US mills, it is important to know the identity of the US surrogate mills and additionally, to know what Commerce knew, did not know and failed to ask about the US surrogate mills that formed the basis of its decision to initiate.

19. Finally, there is no evidence on the record that Commerce knew much about the US surrogate mills. For example, there are no annual reports or product lists in the public version of the Application. Nor are there significant areas redacted in the public version of the Application that might discuss the representative nature or the cost allocations of these mills. It appears that Commerce based its initiation on unsubstantiated assertion by the Applicant. The Application was deficient, and the investigating authority has tried from the beginning to avoid the consequences of the deficiency.

20. Canada reserves the right to respond to any new evidence or information, should such evidence or information exist, that the United States may proffer in support of its assertion that Commerce had sufficient evidence before it to justify initiating this investigation.

D. ARTICLE 2.6

To the US:

> **91. The Panel notes in para. 36 of the US Second Oral Statement that "Canada misunders tands the analysis that was actually applied". Could the US expand on what it perceives the misunderstanding of Canada is?**

21. As there is some discrepancy between what the United States actually did, and what it now tells the Panel, Canada would like to summarize its understanding of "the analysis that was actually applied".

22. The United States told the Panel in its first written submission that it reviewed five factors, from *Diversified Products*, "[a]s **part of** its analysis in determining whether 'clear dividing lines' exist within the product under consideration identified within the petition."[16] In paragraph 36 of its opening statement in the Second Panel Meeting, however, the United States told the Panel, "Commerce's assessment of whether there are 'clear dividing lines' between products is **part of** the

[14] As Canada has stated in previous submissions, including Canada's Second Oral Statement at paragraph 17, the Applicant noted that costs vary significantly among producers based on a number of factors including level of efficiency, type of equipment, physical location and wood fibre source material. See Petition, Exhibit VI.A, Petitioners' Cost Methodology (public version), at 4-5 (Exhibit CDA-134).

[15] Petition, Vol. I (2 April 2001) at I-34 (Exhibit CDA-36); and Petition, Vol. IB, Exhibit 1B-33, Mill Closures – August 2000-March 2001 (Exhibit CDA-177).

[16] US First Written Submission, at para. 103 (emphasis added).

Diversified Products analysis, not subordinate to this analysis."[17] Canada submits that the United States has offered a distinction with a material difference.

23. The central question is whether the *Diversified Products* criteria as applied by the United States satisfy the requirements of Article 2.6. In the first formulation, *Diversified Products* is stated to be part of a "clear dividing lines" test. In the second formulation, the relationship is reversed, and the examination of whether there are clear dividing lines is part of the *Diversified Products* analysis.

24. Although the United States most recently has told the Panel that the "clear dividing lines" test was treated as part of *Diversified Products*, the test actually applied in the investigation was consistent with the first formulation: the United States subordinated the *Diversified Products* criteria to a new and different test for "clear dividing lines", which does not exist in *Diversified Products*.

25. The United States reported to the Panel that its assessment referred to "whether 'clear dividing lines' exist within the product under consideration", but the obligation in Article 2.6 is to determine the like product. The United States thus admits that, in looking for "clear dividing lines", it was not determining whether like products were "identical" to the product under consideration or, in the absence of identical, bearing "characteristics closely resembling" the characteristics of the product under consideration.

26. When the Department of Commerce enumerated the *Diversified Products* criteria for bed frame components and finger-jointed flangestock, it admitted that it did not complete the test. In each instance where the Department of Commerce found bed frame components or finger-jointed flangestock to be unique, entirely unlike the product under consideration, it discarded the criterion from the analysis, preferring to conclude that there was no "clear dividing line" between the disputed product and the product under consideration because of some undefined category of "specialty lumber" that, without explanation, supposedly subsumed both bed frame components and finger-jointed flangestock.[18] Thus, *Diversified Products* was subsumed by a test for "clear dividing lines".

27. The comparisons of Western Red Cedar and Eastern White Pine to the product under consideration suffered a similar fate. Unique characteristics were discarded, as with bed frame components and finger-jointed flangestock, but characteristics that were different were judged not to be "so different" as to warrant the finding of a "clear dividing line". An isolated physical characteristic of an appearance grade species, such as Eastern White Cedar, was found to be similar to a physical characteristic of Western Red Cedar, for example, thus placing the two species on a "continuum" not separated by a clear dividing line.[19]

28. The allegedly similar species did not have to be adjacent to one another on Commerce's continuum. They merely had to have a characteristic that could "link" them. The greater the scope of the investigation, the more characteristics were available to select, creating greater assurance that any distinct like product would have some characteristics also found on the so-called continuum. In such a case, there could never be a "clear dividing line".

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first written submission is an accurate description of the methodology applied, and that the most recent description is not.

E. PHYSICAL CHARACTERISTICS

dimension affected price comparability was the same as the evidence that grade affected price comparability. Canada also noted that there is *no* evidence in the record to the effect that dimension does *not* affect price comparability. No party, including the Applicant, argued, much less provided evidence, that producers and buyers do not consider dimension in setting prices, or that dimension did not have to be considered in deciding what prices to compare. Nor does the record contain any other alternative explanation or evidence of why price differences exist among products of different

are other ways to do so. For example, when differences in variable costs are not available, US law provides for calculating the required due allowance by using differences in market value.[23] None of the US arguments on the lack of variable cost differences is relevant to the issue before the Panel concerning the obligations imposed by Article 2.4, and none of the arguments contradicts Commerce's earlier finding that dimension affects price.

96. At what stage were the respondents informed of DOC's finding that differences in dimension do not affect price comparability? What opportunities were provided to respondents to comment on that finding?

43. The Canadian respondents were not informed of Commerce's decision not to make allowance for differences in dimension until Commerce's Final Determination, after which comments cannot be filed. Moreover, as the Panel has noted in the preceding question, Commerce found in its Preliminary Determination that dimension affected price comparability and reiterated that finding in its Final Determination.[24] Thus, there was no need for respondents to provide pricing or other analyses on this issue following the Preliminary Determination, during the normal briefing period, since Commerce and the Applicant had agreed with respondents' position on this issue.

99. With respect to the consistency in price patterns, the Panel has the following questions:

(a) Could DOC explain in detail the methodology it used to carry out its consistency test? Illustrate your explanation with an example from the test that was carried out in this case, including any sampling, selection of dates, etc. Did the US consider using other methodologies?

(b) Could the US explain in detail how the results of its test were evaluated? Please explain the evaluation leading up to that conclusion.

44. Canada notes that Commerce performed no "consistency" test on the record, and there is no information on the record concerning what methodology would have been used for such a test. To the extent that the United States provides such an analysis now, after the fact, Canada requests that it be provided with a copy of the computer programme used to generate that analysis and an opportunity to comment. Canada also suggests that the Panel evaluate whether the analysis the United States offers is comprehensive or selective (the Panel has information on the number of non-identical comparisons used for each respondent) and when the analysis was prepared.

45. Canada further notes that a "consistency" of the relationship among prices for products of particular dimensions is not relevant to the question of whether dimension affects price comparability. Even assuming that, for selective product pairs, the difference in price fluctuates, the very fact that the prices are different to begin with, establishes that dimension affects price comparability. Fluctuations in relative prices are no different than fluctuations in absolute prices – neither precludes price-to-price comparisons or adjustments.

46. The United States makes much of the fact that for some undisclosed, selected product pairs, for undisclosed respondents, it observed that sometimes one product price was higher and sometimes the other product price was higher. If it were established, for a specific non-identical product comparison used for a specific respondent, that the relative price difference fluctuated above and below zero such that on average it was zero, then the appropriate adjustment for that specific comparison would be zero, as the average difference in value of the products compared was zero. But this result would be by far the exception rather than the rule, and could not relieve Commerce from its

[23] See 19 C.F.R. 351.411(b) (Exhibit CDA-179).
[24] See IDM, Comment 7, at 42-46 (Exhibit CDA-2).

obligation to make an adjustment for non-identical product comparisons where differences in the home market prices of those products were not on average zero.

To both parties:

103. Could the parties confirm whether the percentages mentioned in para. 40 and footnote 33 of the US reply to Question 25 of the Panel relate to differences in dimension only?

47. Canada confirms its understanding that the US analysis relates to differences in dimension only.

F.

105. Please comment on paras. 53, 54 and 62 of the US Second Oral Statement.

51. The US argument as advanced in paragraphs 53-54 is based on a false premise: that Canada claims that the meaning of "all" and "comparable" change between the first and final stages of the first methodology. The paragraphs of Canada's submission which the United States contests are not intended to provide a definition of the terms "all" and "comparable" in any way other than their ordinary meaning. Rather, the paragraphs describe how those terms must be *applied* by an investigating authority in each of the two stages of a comparison such as that performed by Commerce in this case. The fact that the standard in Article 2.4.2, prescribed by the words "all" and "comparable", applies in the case of both simple and complex transactions does not mean that the meaning of either "all" or "comparable" changes. To the contrary, the ordinary meaning of these words is retained, and only their application changes. Canada's submission demonstrates that both "all" and "comparable" can and must be applied during both stages of the comparison, in keeping with their ordinary meaning, and have operational significance at both stages.

52. More generally, the US attack on *EC – Bed Linen* is ill-founded as it attacks the Appellate Body for failure to discuss the requirements of Article 2.4.2 as they apply to each stage of a methodology. The stage or stages in a methodology are simply way points *en route* to calculating a proper margin of dumping. The disciplines imposed by Article 2.4.2 with respect to the first methodology ensure a certain result at the final stage, based on the rule that must be employed in using that methodology, *i.e.*, to use all comparable export transactions. There was no need for the Appellate Body to proceed stage by stage for each methodology in Article 2.4.2. It is worth noting, however, that the panel decision in *EC – Bed Linen* does discuss the stages of the first methodology, and reaches the same conclusion as the Appellate Body.

53. Claims made by the United States in paragraph 62 of its opening statement are addressed in Canada's response to Question 108, below.

106. Please comment on para. 56 of the US Second Oral Statement that:

> **"[u]nder Canada's argument, the first basis for establishing dumping margins — the weighted-average-to-weighted-average basis — would apply to both stages of the calculation. However, the other two bases for establishing dumping margins plainly apply only to the first stage. Thus, Canada's theory leads to an interpretation of Article 2.4.2 in which the scope of the obligation differs depending on the basis for establishing dumping margins. Yet, the provision itself does not support such differential interpretation."**

54. The US statement assumes what must be proven: that Article 2.4.2 concerns only the first stage of a comparison, and not all stages, even though the language of Article 2.4.2 is general and not limited. The United States seeks to portray it as peculiar that the first methodology should have application in both stages of a comparison using the first methodology, but that is only because it has posited that the rules apply only at the first stage. As noted above, Article 2.4.2 applies generally. The differences among the methodologies are differences in detail, not differences in generality of application. The fact that one methodology lacks the specific disciplines of another does not negate the existence of those disciplines in the latter.

55. The US interpretation of Article 2.4.2 would suggest that Article 2.4.2 does not apply at all in a case in which there is only a single stage involved in computation of the dumping margin. Not only would such a reading not comport with the text, it would presume that no discipline is imposed upon investigating authorities in respect of single-stage calculations. This is simply not credible, given the clear obligations imposed in both Articles 2.4 and 2.4.2.

56. Canada's interpretation leaves WTO Members free to apply the first method (weighted average to weighted average) in one stage or multiple stages. In the case of a two-stage process, the wording of Article 2.4.2 has as a consequence that zeroing is not permitted. Contrary to what the United States has argued, this is not a situation in which Canada argues that treaty terms take on a different meaning at different stages of the calculation of the dumping margin. Rather, the Panel is dealing with a general description of one methodology that is provided for in Article 2.4.2 to establish the margin of dumping and the question of what the legal consequences are of that legal provision when a WTO Member decides to apply that methodology through two stages (separate models and subsequent aggregation). The Appellate Body has already pronounced, in *EC – Bed Linen*, that in such a two-stage process, a WTO Member is not permitted to apply zeroing. Canada urges the Panel to follow the Appellate Body's interpretation.

107. Please comment on the US statement that the *AD Agreement* does not recognise a concept of "negative" dumping.

57. Canada would agree that the *Anti-Dumping Agreement* does not *refer* to "negative" margins of dumping. However, the US claim that this fact permits Commerce to ignore certain transactions when aggregating intermediate comparisons into the overall margin is founded on a fundamentally flawed premise: that the *Anti-Dumping Agreement* recognizes "margins of dumping" at all at the first stage of a dump

What is the benchmark against which Canada tests whether a comparison is fair or unfair?

59. The legal basis for Canada's claim that zeroing violates Article 2.4, and the benchmark against which the conduct of the investigating authority must be judged, is the ordinary meaning of the terms of Article 2.4, as described above. A "fair comparison" requires equitable, unbiased treatment of all transactions being compared. Zeroing does not produce a fair comparison because it arbitrarily eliminates certain transactions from the calculation, resulting in a margin that does not equally reflect all transactions. The US reading of Article 2.4 in paragraph 62 of its Second Oral Statement as simply setting forth the factors requiring adjustments to ensure price comparability would render inutile the term "fair comparison." Given that Article 2.4 itself deals with subjects other than price adjustments – such as which sales should be compared and at what level of trade – the US reading of this provision is overly narrow on its face.

specific products sold or produced during a period, Commerce does so in computing its costs of production.

64. The rules for financial accounting are driven by the goal of portraying accurately the financial position of the company. Because financial expenses such as interest expenses are recurring and not dependent upon what is produced or sold in a period, financial accounting rules generally require that they be treated as an expense in the period as incurred, in effect matched to the revenues of the same period for purposes of determining the company's profitability.

65. Significantly, financial accounting does not permit financial expenses to be reported as a cost of sales, because financial accounting recognizes that financial expenses bear no direct relationship to cost of sales.

111. In para. 71 of its Second Oral Statement, Canada alleges that DOC "allocated twice the interest expense actually incurred by relying on an unreasonable and unsupportable methodology". Could Canada please elaborate?

66. Canada's statement was based on the difference for Abitibi between the amount of interest expense allocated to lumber employing Abitibi's total asset-based methodology and the amount allocated to lumber by Commerce employing its cost-of-goods-

Therefore, only the asset-based methodology reflects the financial expenses "associated with" or "pertaining to" each product line.

70. Next, operations begin. Raw materials for production are purchased, workers are hired, and energy and other expenses are incurred, as products are produced and sold. But the amount of funds required for such ongoing operations are not proportionate to the *total* current expenses for any given period of time. As lumber and newsprint are sold, customers pay for it. Thus, the funds needed for each of the two product lines depend on the expenses "outstanding" at any given point in time. As illustrated and explained in the flowchart provided in response to Question 115 below, these amounts consist of the actual expenses incurred for the raw material inventory that must be maintained, the actual expenses incurred for the work-in-process and finished good inventory that must be maintained to fill orders, and the value of the accounts receivables outstanding for sales of each product. These asset values alone reflect the cash needed to operate the two product lines on an ongoing basis. Again, the amount of money needed to establish and operate the two business segments – and thus the financing expenses incurred – is proportionate to asset values. In no way are financing expenses incurred in proportion to cost of sales. Again, only the asset-based methodology reflects the financial expenses "associated with" or "pertaining to" each product line.

71. Canada's argument here is based on how companies actually utilize money. The US' COGS methodology is not based on financial or cost accounting, and is not based on how companies utilize money. Indeed, the United States has not articulated any principled basis at all for allocating interest expenses in proportion to cost of goods sold.

72. In short, in light of Abitibi's factual circumstances – the fact that it produces multiple, varied product lines, which lines have dramatically different asset requirements, and that its total asset needs far outstrip its annual cost of sales – the asset-based methodology is the only methodology that reasonably reflects how Abitibi actually utilizes its capital and money. Only the asset methodology fully considers:

- the complete range of activities for which companies expend funds,
- the amount of funds required for such activities, and
- the amount of time such funds are required.

73. Because the amount of a company's interest expense is a function of all three of these elements, any methodology that fails to consider all such elements may not, depending on the particular circumstances, properly reflect the amount of interest expense "associated with" or "pertaining to" the production and sale of subject merchandise as required by Articles 2.2.1.1 and 2.2.2. of the *Anti-Dumping Agreement.*

74. In light of the factual evidence submitted by Abitibi to Commerce, the Panel is not presented with a choice between two "reasonable" allocation methodologies.[29] The COGS methodology, as applied to Abitibi, was unreasonable because it failed to meet the requirements of Articles 2.2.1.1 and 2.2.2, in multiple, independent respects that Canada has discussed in its prior submissions.[30] We highlight two examples here.

75. First, the plain language of both Articles 2.2.1.1 and 2.2.2 requires use of an allocation methodology that considers expenses associated not only with the *production* but also with the *sale* of the product under investigation. Commerce's COGS methodology, however, considers only production expenses (and even then, only current expenses without regard to the value of assets required for such production). Yet, because Abitibi is not paid immediately upon making a sale, Abitibi necessarily finances *sales* to its customers by the extension of credit until the customer pays.

76. The record evidence showed that this was an important consideration in regard to Abitibi's financing needs. Abitibi demonstrated to Commerce that it offered far more generous credit terms to its newsprint, pulp and paper customers than to its lumber customers, and that its lumber customers paid much more quickly.[31] The shorter time period for payment meant lumber sales generated less financing needs. Commerce's COGS methodology utterly ignores the different financing expenses associated with the *sale* of lumber as opposed to pulp, paper, and newsprint, in violation of the plain language of Articles 2.2.1.1 and 2.2.2. The asset-based methodology, on the other hand, fully captures the different financial expenses associated with the *sale* of different products, because the value of accounts receivable for different products reflects differences in credit provided for different products, and accounts receivable are an asset included in the asset-based allocation. Commerce's methodology ignores the financing costs of accounts receivable entirely.

77. Second, and relatedly, is the distortion referenced in the question itself. The United States conceded in its First Written Submission that

considers only the less significant current expenses and ignores the more significant $11 billion in assets. Absent some explanation of why it was necessary or appropriate to ignore $11 billion in assets, it cannot be reasonable both to acknowledge that assets are financed and then ignore asset values in allocating financial expenses.

79. Moreover, the US argument that depreciation expense accounts for the differences in financing requirements generated by the different asset needs of different products, is completely incorrect. As Canada has demonstrated, when Abitibi purchases an asset it must pay for and finance the full value of that asset, not just its depreciation expense.[33] This means that by valuing financing requirements at the amount of a products' depreciation expense, the COGS methodology fails to

83. Exhibit CDA-176 and paragraph 80 of Canada' Second Oral Statement demonstrate the falsity of that argument by showing (1) that "assets" is not simply one activity or type of investment, but rather comprehensively reflects all activities and expenditures in which a company engages, and (2) as an illustration, that *every single type of expense included in COGS also is included in the asset-based methodology*. Thus, applying the United States' own suggestion that limited allocation bases for financial expenses should be rejected in favour of broadly based allocations, the COGS methodology fails.

84. Exhibit CDA-181 explains further how every single item of expense in COGS is captured using an asset-based allocation.[38] This is a flowchart showing how all current production expenses flow through and thus are captured in asset values, at the same value as they are in COGS, for the

as to why that should be the standard, nor is there even an argument that the COGS methodology uses the widest range of costs possible.

93. In light of the reference standards suggested above, Canada offers the following list of advantages and disadvantages based on its earlier submissions:

	ADVANTAGES	DISADVANTAGES
ASSET-BASED	1. comprehensively considers all categories of company-wide expenditures, including all expenses included in COGS, and numerous expenditures not included in COGS 2. considers financial expenses associated both with the *production* and *sale* of the product under consideration 3. fully values all assets 4. considers time period for which expenditure is outstanding, consistent with how financing expenses are incurred 5. consistent with basis on which financial expenses are incurred 6. broadest allocation basis possible 7. accurately reflects the relative borrowing needs for different product lines, and thus results in an allocation to lumber of the financial expenses associated with and pertaining to the production and sale of lumber	1. can be used only for companies such as Abitibi that segregate assets by business line
COGS	1. very simple to apply, and can be applied in every case because all financial statements state cost of good sold	1. considers current production expenses only 2. fails to consider financial expenses associates with the *sale* of the product under consideration 3. ignores entirely, for no stated reason, non-depreciable assets, like accounts receivable, land, investments in other companies, and, also with no stated justification, considers depreciable assets fractionally, at their depreciation expense rather than the full value that must be financed 4. fails to take into account the time period for which the expenditure is outstanding, and thus overstates financing requirements of current production expenses for products sold and paid for

	ADVANTAGES	DISADVANTAGES
		5. results in a cost mismatch, in that an allocation based on products

methodology for business segments as the one described in Tembec's Annual Report from 2000.[48] Tembec has followed this same approach for more than ten years. Through the years, Tembec's internal accounting methodology has been consistent and reliable in calculating G&A expenses specific for each of its five business units.

101. Tembec provided detailed information to Commerce on the makeup of its Forest Products Group G&A in its first questionnaire response.[49] The financial statements of the Forest Products Group did contain complete G&A information, which Tembec provided to Commerce, including its fully allocated share of the head office G&A. Commerce officials, during verification, traced Tembec's G&A calculation to Tembec's Annual Report for 2000 as well as Tembec's detailed statement of costs through the company's consolidation software (*i.e.*, Hyperion).[50]

118. Please comment on para. 70 of the US Second Oral Statement:

> **"unlike audited financial statements, internal, division-specific records are not intended as objective measures of a company's performance. Instead, the function of division-specific records is to "enable financial statement users to see the business through the eyes of the management.""**

102. It is not obvious what distinction the United States is attempting to make in the above-quoted paragraph. Canada assumes the distinction is between audited accounting records and separate non-audited reports that management frequently creates for managerial as opposed to financial accounting purposes.

103. This distinction is not relevant to the G&A issue currently before the Panel. The statements from which Tembec derived its Forest Products Group G&A data are not managerial reports. They are part of Tembec's financial accounting records. As noted on page 44 of Tembec's Annual Report, the same accounting policies were used in preparing the Forest Products Group's statements as were used in preparing the consolidated company-wide financial statements.[51] The Forest Products Group's accounting records tie directly into the consolidated company-wide financial statements and were reviewed by Tembec's auditors as part of the audit of the consolidated financial statements.[52] As such they are an objective measure of the Forest Products Group's performance.

104. Commerce has relied upon these data in every other calculation methodology and Commerce officials personally verified their accuracy at Tembec. There is nothing in Article 2.2.1.1 or 2.2.2 that expresses a requirement or preference for audited records or consolidated statements. Further, nowhere in the Final Determination does Commerce state that its decision to reject the Forest Products Group data was based on the fact that the segmented statements were not audited or that

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[48] Tembec Inc. 1994 Annual Report, at 20-22 and 38-39 (Exhibit CDA-184); Tembec Section A Questionnaire Response (22 June 2001), Exhibit A-15, at 44 - 45 (Exhibit CDA-94).

[49] Tembec's Section D Questionnaire Response (23 July 2001), at D-28-29 (Exhibit CDA-183 – Contains Business Confidential /68no i2eoi38126

segmented statements are, supposedly, only for managerial purposes. The attempt by the United States to do so now is simply an *ex post facto* rationalization.

To both parties:

> **121. Was the "internal accounting methodology" referred to in Comment 33, p. 105, of the Memorandum of 21 March 2002 an allocation methodology "historically utilized by the exporter"? Please refer to the record.**

105. What Commerce referred to as Tembec's "internal accounting methodology" is the accounting methodology that Tembec has used historically. Tembec has calculated its G&A expenses consistent with that methodology for at least the past 10 years. Canada refers the Panel to Canada's

108. The United States in its Second Oral Statement expressly stated that Commerce, as a matter

revenue offsets.[61] Canada provided Exhibit CDA-175 as an example of the accounting literature discussing the proper treatment of this type of revenue offset *within a corporation*. The exhibit draws no distinction between internal transfers and affiliated transfers.

113. In the Second Substantive Meeting, the United States attempted to assert that this exhibit supported its position that there is a cost of production for a by-product. It referred to the use of the word "cost" in the exhibit in support of its position. A careful review of the exhibit, however, demonstrates that it undermines, rather than supports the US position.

114. This text discusses the miscellaneous income approach and the net realizable value method for accounting for the value of waste, scrap and by-products. The first method is only appropriate as an accounting "short-cut" when the value of the by-products or scrap is uncertain or very small.[62]

115. The second method was selected by Commerce in the underlying investigation. In this method, the *net realizable value* of the by-product (wood chips) is offset against the cost of production of the major product (softwood lumber). The net realizable value method is used to measure the value of: (1) by-products; and (2) waste or scrap that is processed subsequently into a saleable product.

116. The net realizable value method values by-products at their "selling price" or market value. After the "split off" from the major product some forms of waste may be further processed into by-products. In this situation, the net realizable value method values the by-product produced from the waste at market value less the cost of any further processing that was required after the "split off" from the major product.[63] Applied to the present situation, wood chips are by-products that do not require further processing to become a saleable product. Accordingly, wood chips must be valued at market value.

117. Canada reserves its right to comment on any explanation the United States provides concerning its internal transfer methodology.

K. WEST FRASER

To Canada:

> **131. Based on information on the record at the time of the investigation, please provide the total volume (in ODTs) of wood chips sold by West Fraser in British Columbia. Please provide separately for the same market, the volume (in ODTs) of wood chips sold to affiliated and unaffiliated parties.**

118. The total quantity of wood chips sold by West Fraser in British Columbia during the period of investigation amounted to [[ ]].[64] Of this total quantity, [[ ]] (which accounted for 99.7 per cent of West Fraser's total wood chip sales) were sold in affiliated transactions.[65] In contrast, only [[ ]] were sold in unaffiliated transactions (an amount that a large pulp mill would consume in less than one day).[66] As outlined in Canada's previous submissions, these unaffiliated

[61] The US methodology would even distinguish between internal transfers and transfers between a parent corporation and a wholly owned subsidiary. Id. at 118.

transactions only amounted to less than 0.3 per cent of record evidence concerning B.C. market prices during the period of investigation.

132. Canada has stated in the Second Substantive Meeting that prices concerning the long-term contract of the McBride mill fluctuate. Could you please confirm that?

119. As a threshold matter, Canada would like to observe that the record evidence is limited concerning the exact details of the McBride wood chip contract. Commerce's Cost Verification Report shows that West Fraser officials discussed the wood chip issue with Commerce's verification team and made those officials aware that a long-term contract (entered into before West Fraser purchased the mill) obligated McBride to sell wood chips at a lower contracted price when market prices began to increase in May 2000.[67]

120. In the interest of responding to the Panel's question, however, Canada can confirm that prices under the long-term contract of the McBride mill did in fact fluctuate. The McBride contract set prices at the beginning of each calendar quarter based on market conditions in the previous quarter. As wood chip prices had already been set for the second quarter of 2000, McBride was unable to increase its prices when the market value of wood chips increased in May 2000[68], as reflected in Commerce's cost verification report. It is important to note that all wood chip sales from McBride during the period of investigation occurred in the first two months (*i.e.*, April and May 2000).

L. SLOCAN

To Canada:

134. Based on information on record, where in Slocan's books is the revenue generated by, and cost associated with, the sale of a futures contract accounted for? Please explain it in detail.

121. As explained in Canada's response to the first questions, Slocan treated liquidated hedging contracts as US lumber sales and listed the Chicago Mercantile Exchange (CME) as the customer.[69]
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- Evidence that these futures revenues only relate to the US market;[77]
- Slocan's treatment of futures revenue in its books and records as lumber sales revenue;[78]
- An explanation of the purpose and effect of futures hedging contracts for lumber prepared by the CME;[79]
- Slocan's hedge approval for the CME (demonstrating that Slocan was a hedger rather than a speculator);[80]
- Slocan's standard futures hedging contract;[81] and
- Slocan's hedging account designation agreement with its broker.[82]

126. Most tellingly, as the United States conceded in the Second Substantive Meeting, Commerce has concluded that these futures revenues constitute an offset to indirect selling expenses. This concession is itself an admission that Commerce in fact concluded that Slocan had *demonstrated an effect on price comparability.* Consequently, Commerce was required to make an adjustment of some kind to ensure a fair comparison.

127. The United States repeatedly refers to irrelevant aspects of its own domestic law to argue that Commerce was not required to provide an adjustment. In effect, the United States claims that Slocan was required to "guess" the right type of US domestic law adjustment, before Commerce would provide this adjustment. This is not, however, a prerequisite to a proper adjustment for a difference affecting price comparability under Article 2.4 of the *Anti-Dumping Agreement.*

128. In *United States – Hot Rolled Steel*, the Appellate Body found that Article 2.4 requires that appropriate "allowances" must be made to ensure a "fair comparison".[83] The Appellate Body also explained that "under Article 2.4, the obligation to ensure a 'fair comparison' lies on the *investigating authorities*, and not the exporters."[84] As the panel in *Egypt – Steel Rebar* concluded, this type of explicit obligation must be "performed by the investigating authority on its own initiative, and exactly as specified in the *Anti-Dumping Agreement*".[85] Finally, Article 2.4 also places the obligation on the investigating authority to "indicate to the parties in question what information is necessary to ensure a fair comparison" if the requisite information has not been provided. At no point in time did Commerce request additional evidence from Slocan to demonstrate an effect on price comparability.

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[77] *Ibid*. The database field DIRSEL2 was only found in the database relating to US sales. There is no futures market that is comparable to the CME in Canada.

[78] Slocan Case Brief (12 February 2002), at 70 fn 24 (Exhibit CDA-156). Also see US First Written Submission, at para. 246; US First Answers to Questions, at fn 77 and para. 138; and IDM, Comment 21, at 94 (Exhibit CDA-2).

[79] Chicago Mercantile Exchange, "An Introductory Hedge Guide - Random Lengths" (Chicago: Chicago Mercantile Exchange, 2000), Slocan Sales Verification Exhibit 21, at VE02362 - VE02380 (Exhibit CDA-119).

[80] Chicago Mercantile Exchange, "Year 2001 Hedge Approval" (29 December 2000), *ibid*., at VE 02428 – VE02429.

[81] Merchants Trading Company, "Customer Information Sheet – Customer Agreement", *ibid*., at VE0281 – VE02382.

[82] Merchants Trading Company, "Hedging Account Designation", *ibid*., at VE 02386.

[83] *US – Hot Rolled Steel*, at para. 176.

[84] *Ibid*., at para. 178 (emphasis in original).

[85] *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, Report of the Panel, WT/DS211/R, adopted 1 October 2002, at para. 7.2.

129. As outlined above, Commerce has determined that these futures revenues were an offset to "indirect selling expenses" that affect price comparability. As there was an effect on price comparability, Article 2.4 required Commerce to provide an adjustment of *some kind*. Further, Commerce was required to provide this adjustment even if it determined that "direct selling expenses" were not the proper form of adjustment under US domestic law. Commerce was not free, however, to ignore the effect on price comparability altogether, and to make no adjustment whatsoever.

130. Finally, the United States attempts to argue that "direct selling expenses …[are] a type of adjustment for differences in conditions and terms of sale."[86] Although "direct selling expenses" might often constitute "conditions and terms of sale" these expenses will sometimes more properly relate to other listed differences in Article 2.4. A simple example is illustrative. In the underlying investigation, Softwood Lumber Agreement (SLA) taxes were deducted as "direct selling expenses".[87] Article 2.4 requires that due allowance is made for differences relating to "taxation". As an export tax

expense" adjustment.[89] It then used the same records to support its determination that futures revenues were not a form of investment income.[90] This selective reliance on Slocan's records is neither even-handed nor objective.

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during the investigation was to isolate those corporate expenses that were attributable to the production and sale of softwood lumber by Weyerhaeuser Canada Limited, its Canadian business.

137. Weyerhaeuser International did not prepare consolidated financial statements.

138. Weyerhaeuser Canada Limited prepared financial statements for its own operations, in accordance with US Generally Accepted Accounting Principles, that Commerce relied on during the investigation.[93] All G&A expenses associated with the production and sale of Canadian softwood lumber appeared on Weyerhaeuser Canada's financial statements. The hardboard siding expense did not appear on Weyerhaeuser Canada's financial statement because it was an expense related solely to Weyerhaeuser Company's US operations.

139. Commerce committed an error when it attributed the hardboard siding expense to the production and sale of softwood lumber because the hardboard siding expense related to Weyerhaeuser Company's US operations; it was not a Company-wide headquarter expense incurred on behalf of Weyerhaeuser Company's global business.

140. Attached as Exhibit CDA-190 is a narrative portion from Weyerhaeuser's Section A Response to Commerce[94], discussing the financial statements produced by Weyerhaeuser Company.

93 Weyerhaeuser Section A Questionnaire Response (22 June 2001) at A-52 **(Contains Business Confidential Information on page A-52)** (Exhibit CDA-190).

94 Ibid., at A-52 – A-54.

ANNEX B-2

RESPONSES OF THE UNITED STATES TO QUESTIONS POSED IN THE CONTEXT OF THE SECOND SUBSTANTIVE MEETING OF THE PANEL

(26 August 2003)

1. The following responses of the United States answer the 13 August 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 QUESTIONS

To the US:

86. The Panel refers to paras. 2 and 3 of the US Second Oral Statement. The Panel requests the US to note all the "misstatements" that it has identified in Canada's submissions, in addition to those mentioned in the Second Oral Statement. Further, in its replies to the questions posed by the Panel, Canada's Second Written Submission and Second Oral Statement, Canada made detailed factual presentations relevant to its claims. The US is requested to identify and substantiate all factual aspects with which it disagrees with Canada.

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5. The United States has argued that Canada's interpretation of Article 5.2 effectively would require an investigating authority to undertake a pre-initiation inquiry. Under Canada's theory, an authority would have to satisfy itself that an application contained *all* information reasonably available to the petitioner on the subjects specified in Article 5.2. Put another way, the authority would have to determine what information was reasonably available to the petitioner (potentially, a very broad universe of information) and whether any of that information had been excluded from the application. The only way to make such a determination would be to conduct an investigation. The

being modelled" included the entire Canadian softwood lumber industry (not merely the very largest producers that were subsequently selected as respondents). The lumber industry is disaggregated and diverse, and the mills whose production factors were included in the application were among those listed in a US Department of Agriculture publication focusing on "large, permanent operations that make up the bulk of the industry.[33]

89. In its reply to Question 8, Canada submits that using the Applicant's Random Lengths price data for Quebec, a comparison of all of the Quebec ex-factory price data for ESPF (2x4, Studs&Btr, KD, RL and 2x4-8', PET, KD) products sold in Quebec and in the US, shows that the US price was consistently higher during the period and that there was therefore no price-to-price dumping demonstrated by the evidence in the Application. It further provides a calculation in footnote 32 to substantiate the allegation. Could the US please comment on this allegation and on the calculations?

13. Both the allegation and the calculation are irrelevant to the question of whether Commerce properly initiated and continued the investigation, because neither the application nor Commerce's decision to initiate was based on price-to-price dumping. As Commerce explained in its initiation checklist, "Because the Canadian prices, when compared to the COP, were demonstrated to be below the COP, petitioners have based their margin calculations on the comparison of {export price} to {constructed value}."[8] This comparison of export prices to constructed value demonstrated that softwood lumber was sold at prices below the cost of production, *i.e.*, dumped.

90. Please comment on Canada's Second Oral Statement, para. 20 which states that:

> **"[t]he United States, hiding behind the pretence of confidentiality, has not provided this Panel with any information that was before Commerce about the two US surrogate mills. These US mills were at the heart of Commerce's decision to initiate. Canada has not seen, and the Panel still does not have before it, basic information in the hands of the United States, such as the names of the US mills and what Commerce knew about those mills. The United States has responded to Canada's claims with nothing but assertions."**

14. As a preliminary matter, the United States finds it hypocritical for Canada to be accusing the United States of "hiding behind the pretence of confidentiality." Canada understands well the sensitivity of business confidential information and the importance of safeguarding it adequately and not disclosing it without the consent of the submitter.[9] It comes as a surprise, therefore, that Canada would dismiss as "hiding behind the pretence of confidentiality," Commerce's legitimate protection of the confidentiality of certain information as required by US statutory law.

15. In any event, Canada ignores both the arguments and the supporting record evidence cited by the United States in its Second Written Submission at paragraph 25 and the footnotes thereto, which demonstrate that the mills in question were within the range of the mills which "make up the bulk of the [US and Canadian softwood lumber] industry."[10]

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practice (which is clearly reflected, for example, in the pricing patterns found in the *Random Lengths* materials in the application). *See* Canada Second Oral Statement, paras. 16-20.

[8] *See* Checklist (Exhibit CDA-10) at 7; *see also* Initiation Notice (Exhibit CDA-9), at 66 Fed. Reg. 21330 (margin was based on a comparison of export price to constructed value).

[9] *See* Contribution of Canada to the Improvement of the WTO Dispute Settlement Understanding, TN/DS/W/41 at p. 2 (24 Jan. 2003).

[10] US Second Written Submission, para. 25, note 38.

D. ARTICLE 2.6:

To the US:

91. The Panel notes in para. 36 of the US Second Oral Statement that "Canada misunderstands the analysis that was actually applied." Could the US expand on what it perceives the misunderstanding of Canada is?

16. The most important point related to Canada's claim under Article 2.6 is that this provision contains no obligation concerning an investigating authority 's definition of the product under consideration.[11] In various submissions and statements in this dispute, the United States has endeavoured to explain Commerce's administrative practice in defining the product under consideration. It has done so not to defend Commerce's

20. Canada's erroneous contention that in this investigation Commerce abandoned its usual practice and applied an unfamiliar analysis appears to be an attempt to compensate for Canada's inability to identify an applicable obligation under Article 2.6. As Article 2.6 is silent on the question of how an investigating authority identifies the product under consideration, Canada has resorted to the suggestion that, whether or not there is an express obligation in this area, Commerce acted unreasonably by deviating from its normal practice. However, the isolated statements on which Canada relies do not support that contention. In identifying the product under consideration in this investigation, Commerce applied its normal *Diversified Products* analysis.

E. PHYSICAL CHARACTERISTICS:

To the US:

> **94. We refer to the following statement in para. 50 of the US Second Oral Statement:**
>
> > **"for all physical characteristics, except dimension, Commerce had cost data to connect the physical differences to the impact on price, pursuant to its normal methodology."**
>
> **Could the US confirm that it normally bases adjustments on differences in variable costs and that in this instance DOC could determine adjustments on such a basis for all differences except for dimension?**

21. The United States confirms that Commerce normally bases a price adjustment for differences in physical characteristics in the product under consideration on reported differences in the variable

trim and further manufacturing. Our analysis confirms that most lumber produced within a given species has the same production cost.

The respondents have cited to UHFC Company v. United States, 916 F.2d 689 (Fed. Cir. 1990), where the Court of Appeals for the Federal Circuit (CAFC), in that specific case, instructed the Department on remand to match across different strengths/grades, despite the fact that differences in costs could not be calculated. In that case, the product involved was animal glue, where different strength/grades were produced at the same time, using the same production process. The respondents claim that in accordance with the Court's decision in that case, "the Department must calculate a value-based difference-clsmatch acros26B56279.5 0 TD 0 174Department m0383

to allocate certain costs to grade and dimension using value data. As Commerce explained in its *Final Determination*

97. Please comment on Canada's response to Question 22, with reference to the respondents' demonstrating a need for a price adjustment:

> **"at the beginning, of the period, in April 2000, Abitibi's average net price for No. 2 grade 2x4x8 was around [[ ]] whereas the No. 2 2x6x16 price was [[ ]]. The comparable figures for economy grade were [[ ]] for the smaller size and [[ ]] for the larger."**

34. The above example does not demonstrate a need for a price adjustment. This specific example, provided to Commerce in Abitibi's case brief during the investigation, is flawed because it relies on average prices for only one month. The example says very little about the effect of different dimensions on prices, as it only represents a limited amount of price data (average prices in a single month) and it is not clear what other factors might account for the price differences. Anecdotal price differences such as these may be part of a discernible pattern indicating price differences attributable to dimensional differences, or they may merely reflect coincidental pricing differences unrelated to differences in dimensions.

35. Attached to this submission, at Exhibit US-81, is a chart plotting the actual net sales prices of Abitibi's 2x4x8 No. 2 grade and economy grade softwood lumber and 2x6x16 No. 2 grade and economy grade softwood lumber over the course of the period of investigation. These are the same products as in the example from Abitibi's case brief.

36. What the exhibit strikingly demonstrates is that a price adjustment for dimension is *not* warranted, because no pattern of consistent price differences based on dimension is discernible. The prices, within each grade, for the two different dimensions converge, diverge and overlap during the period of investigation. In stark contrast, prices of the No. 2 grade and the economy grade remain consistently distinct. This example of the distinction between the relative behaviour of grade and dimension supports Commerce's differing treatment of grade and dimension (using value data to allocate certain costs to grade) in the cost methodology for the *Final Determination*.

98. The Panel notes the following statement contained in Canada's response to Question 22:

> **"Tembec suggested several alternative data sets and methodologies for computing such an adjustment (DIFMER)."**

Was the proposed methodology evaluated? What was the result of this evaluation? Please indicate where such a result can be found on the record.

37. The quoted sentence is another example of Canada's mischaracterization of the record. In fact, Tembec's "suggestions" amounted to no more than brief requests to use pricing data on the record, requests that had already been made to and rejected by Commerce in the *Preliminary Determination*. The full quote from Tembec's case brief reads as follows:

> The record is sufficient to calculate a value-based Difmer. The Department could use the relative values of the respective CONNUMs as reported in the respondents sales databases, the Publicly Available Published Information from sources such as Random Lengths, or historical value data as submitted by several respondents. Were

> the Department to think that other data were required, the Department should have requested such data.[31]

38. Commerce addressed these suggestions in the *Final Determination.*[32] With respect to the use of the respondents' own sales pricing data as a basis for calculating a price adjustment, Commerce again noted the large number of sales made outside the ordinary course of trade, as it had in the *Preliminary Determination*: To use respondents' prices "would adjust normal values back to prices already determined to be outside the ordinary course of trade, the whole reason why we would be disregarding such prices and comparing to a similar product."[33] With respect to the use of *Random Lengths* data, Commerce reiterated that the data were not complete.[34] In the *Preliminary Determination*, Commerce stated its reservations concerning the use of historical price data, indicating that it had no basis on which to determine whether or not those sales had been made in the ordinary course of trade.[35] Commerce concluded that a price adjustment was not warranted based on its evaluation of all the data on the record.[36]

> **99. With respect to the consistency in price patterns, the Panel has the following questions:**
>
> **(a) Could DOC explain in detail the methodology it used to carry out its consistency test? Illustrate your explanation with an example from the test that was carried out in this case, including any sampling, selection of dates, etc. Did the US consider using other methodologies?**

39. In deciding how to address dimensional differences in this case, Commerce had four options: (1) calculate a value-based cost across dimension, which would allow the calculation of a cost-based price adjustment for dimensional differences pursuant to Commerce's normal methodology; (2) calculate a value (price)-based adjustment for dimensional differences; (3) calculate no price adjustment; or (4) continue to use the same methodology as in the *Preliminary Determination*, and not match products across dimension.

40. In order to consider the first three options, all of which were suggested by various respondents, it was necessary to examine the relative prices of the various dimensions. As indicated above, Commerce examined relative prices initially in the context of determining whether or not to calculate a value-based cost. Because Commerce was deciding which cost methodology to use, Commerce examined all prices for selected dimensions in its relative price test, even those which would eventually be found to be below cost. Commerce concluded that the random nature of the movement in relative prices between the various dimensions precluded dimension-specific prices from providing a sound basis for a value-based cost allocation.[37]

41. Using the same relative price tests, Commerce next considered the issue of whether, if it compared products across dimension, it was more appropriate to calculate a price-based adjustment for differences in dimension, or to make the comparisons with no such adjustment. Commerce examined random sales of commonly sold softwood lumber products, comparing products with

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[31] 12 Feb. 2002, Tembec Case Brief, 37-38 (Exhibit CDA-142, pp. 163-164). The United States notes Tembec's first sentence from the quote above: "The record is sufficient to calculate a value-based Difmer."

relatively small dimensional differences. Commerce chose products with small dimensional differences, because its computer programme was designed to match US sales to the above-cost home-market sales with the smallest possible dimensional differences.

42. Examples of the tests Commerce carried out can be found in Exhibit US-76 (replacement), involving two West Fraser products, and in Exhibits US-42 and US-43, involving two Slocan products. Commerce compared the actual home market sales prices for each of the Canadian respondent companies, plotting sales over the entire period of investigation. The sales included both above- and below-cost sales, as the point of the tests was to determine whether a pattern of consistent price differences which could be linked to dimension existed.

(b) Could the US explain in detail how the results of its test were evaluated? Please explain the evaluation leading up to that conclusion.

43. As a result of the above analysis, it was apparent that no reasonable adjustment could be measured or quantified. The prices of the sampled products fluctuated relative to each other over the period of investigation, such that no adjustment could reliably account for the difference in price at any given time. The sample comparisons demonstrated that the price *differences* between the comparable products varied to a significant degree. For example, the price differences between two products were both negative and positive in varying amounts over the course of the period of investigation. The sample West Fraser comparison provided in Exhibit US-76 (replacement) illustrates such fluctuations. In looking at these comparisons, Commerce found that not only would it be unable to quantify any price adjustment, but that given the relative fluctuations, an adjustment was not warranted. For example, if the price differences between two products were negative at some points during the period and positive at others, there was no meaningful way to determine whether an adjustment between those two products should be positive or negative, and therefore, there was no rational basis to conclude that an adjustment was appropriate. Ultimately Commerce concluded, after looking at all of the sample comparisons and seeing the degree of relative price fluctuations between the products most likely to be compared, that price differences could not be attributed solely to differences in dimension, particularly where those differences were minor.

44. Had respondents had other means to demonstrate a more consistent pattern of price differences, Commerce would have considered such data. The respondents had raised the issue themselves and had opportunities to present data in support of their claims.

100. The Panel notes that in Exhibit CDA-2, p. 51 it is stated that:

> **"as we stated in the Preliminary Determination, we do not believe it would be appropriate to use the respondents' prices as a basis for calculating a difmer adjustment where there were home market sales outside the ordinary course of trade during the POI for certain products involved here. To do so would adjust normal values back to prices already determined to be outside the ordinary course of trade, the whole reason why we would be disregarding such prices and comparing to a similar product."**

In response to an oral question by the Panel on 11th August, the US indicated that all the price data – including those prices which had previously found not to be cost-covering – were used for the consistency test. How does this statement reconcile with the above-in8169-0.1282

discarded all below-cost sales prior to making price comparisons. The comparison that Commerce actually made was to the most similar product which had any sales which passed the cost test. As Exhibit US-76 shows, the prices of the most similar products were often only marginally above the cost of production. Therefore, it appears that the low-value products which generated high margins were, in fact, the most dumped products. It is for that reason, rather than the dimension of the compared product, that these low-value, low-priced US sales generated high margins.

49. In addition, Canada distorts the effect of these sales on the final margin by emphasizing the number of comparisons, rather than the quantity of lumber involved in the comparisons. Taking quantity of lumber into account, even the fact that the products at issue were heavily dumped (that is, that the margins on those particular sales were high) still had a limited effect on the final margin.

50. Canada has not established a *prima facie* breach of Article 2.4 (paragraph 60 of its Second Oral Statement), simply by claiming that the margins of the nonidentical comparisons were 2 to 7 times higher than the margins of the identical comparisons. Canada's argument rests principally on its claim that all parties acknowledged that dimension affects price. However, the evidence from the record Canada has cited[42] did not prove that any amount of differences in prices were specifically attributable to differences in dimension. Commerce found that relative prices of otherwise identical products of different dimensions appeared to fluctuate randomly, making it impossible to attribute any differences in price to the dimension of lumber. Therefore, because dimension was not demonstrated to affect price comparability, Commerce was not required to make any allowance for differences in dimension under Article 2.4.

To both parties:

> **103. Could the parties confirm whether the percentages mentioned in para. 40 and footnote 33 of the US reply to Question 25 of the Panel relate to differences in dimension only?**

51. The percentages referred to in paragraph 40 and footnote 33 of the United States First Answers to the Panel's questions relate to all differences in physical characteristics, not just dimension. However, the United States notes that the majority of the "similar" (*i.e.*, non-identical) comparisons will include different dimensions as a result of the model match methodology. Therefore, the United States does not believe that similar matches as a percentage of total comparisons (either weighted by quantity or stated as a raw number) would be significantly different if limited to dimension only.

F.

Stage 1

(a) Relevant physical and other (*e.g.*, level of trade) characteristics are identified for sales matching purposes.

(b) For each combination of relevant physical and other characteristics of products sold in the United States during the period of investigation, the identical or most comparable combination of physical and other characteristics of products sold in the home market is identified.

(c) Where the combination of characteristics is not identical between the two markets and the differences have been demonstrated to affect price comparability, price adjustments are made.

(d) For all sales of each combination of relevant physical and other characteristics of products sold in the United States during the period of investigation, and for each most comparable combination of characteristics of products sold in the home market, the weighted-average price per unit (including any adjustments identified in (c) above) is calculated.

(e) For each set of comparable characteristics, the weighted-average normal value per unit is compared to the weighted-average export price (or constructed export price) per unit. When the weighted-average normal value exceeds the weighted-average export price, the difference is the per unit dumping margin for that comparison. When the weighted-average normal value is equal to or less than the weighted-average export price, there is no dumping margin for that comparison.

Stage 2

(f) Each per unit dumping margin found in step (e) is multiplied by the volume of the export transactions used in the comparison that resulted in that dumping margin.

(g) The results of step (f) are summed to create the numerator for the overall dumping margin calculation.

(h) The result of step (g) is divided by the aggregate value of all export transactions utilized in step (e).

53. The result of step (h) is the overall dumping margin for a given respondent. This overall dumping margin is the provisional measures rate in a preliminary determination and the cash deposit rate (estimated dumping duty) in a final determination.

54. In the absence of an administrative review, the estimated dumping duty is definitively collected. However, if a review is requested, Commerce performs a similar calculation to that identified above in order to calculate an appropriate assessment rate for the importer and a new cash deposit rate for the producer.

55. The differences between a review and an investigation are generally found in stage 1. In a review, rather than compare period-wide weighted averages, Commerce normally compares individual export transactions to a monthly weighted average of the most comparable home market sale. The results of these comparisons are combined in the same manner as described in the stage 2 discussion above to establish a new cash deposit rate.

56. A separate stage 2 calculation is performed to establish importer-specific rates for purposes of assessing definitive duties. For these purposes, the results of the comparisons between export transactions and monthly weighted average normal values are segregated based on the importer involved in the export transaction. The stage 2 calculation is then performed on an importer-specific basis, using the importer's entered value as the denominator.

G. ABITIBI:

To the US:

113. Please comment on Exhibit CDA-176.

57. Exhibit CDA-176 provides in chart form many of Canada's unsubstantiated claims related to Commerce's COGS-based methodology for the allocation of financial costs. Specifically, Canada highlights different kinds of assets that it believes are ignored through the COGS-based methodology. The vast majority of Abitibi's assets are considered through the COGS methodology.[43]

58. The argument for which Canada relies on in Exhibit CDA-176 is based on at least two false premises. The first false premise is that the costs of producing goods are fully reflected in accounts receivable. Financial costs relate to all the costs a company incurs in relation to the production of goods. As fully discussed in answer to question 115 below, Canada's argument falsely presumes that the only COGS that should be considered in the allocation of financial costs are those COGS captured in inventory. However, there is no evidence that Abitibi only incurs financial costs on inventory. Financial costs relate to all the costs a company incurs, including the costs incurred on producing sold goods as well as the costs incurred on producing goods in inventory. Commerce's COGS-based methodology considers both of these costs, while Canada's methodology considers only the latter. Canada's argument is also based on the false premise that Abitibi finances the full value of its assets in each year of production.[44] This extraordinary claim is contrary to normal business practices and entirely unsubstantiated. Depreciation expenses included in the COGS-based methodology which represent the cost incurred in using an asset in a given year are a reasonable, and, in fact, a more appropriate basis upon which to consider assets in the allocation of financial costs.

114. Please comment on Canada's Second Oral Statement, para. 72 which states that:

> **"Commerce: asserted in the Final Determination that it used COGS, not because it was the proper methodology for Abitibi's facts, but because it was Commerce's "established practice" and**

> consistent and predictable practice for calculating and allocating financial expenses."[45]

While predictability and consistency are important goals to which any investigating authority aspires, these were by no means the only bases for Commerce's determination. Commerce considered Abitibi's argument relating to an asset-based allocation for financial costs and rejected it. Specifically, after finding that Abitibi's argument was improperly premised on the debt of the company relating to only non-lumber producing divisions Commerce stated:

> "[T]he Department's method addresses Abitibi's concern that those activities [*i.e.*, non-lumber production] 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 lumber products, less interest will be applied because the total cost of manufacturing for lumber products includes a lower depreciation expense".[46]

Thus, rather than ignoring Abitibi's arguments, Commerce expressly considered them and rejected them.

To both parties:

> **115. The Panel understands Canada to argue in para. 80 of its Second Oral Statement that an asset-based methodology can capture the flow elements through inventory. Please comment.**

60. Canada's assertion in paragraph 80 of its Second Oral Statement is simply wrong. Abitibi's suggested asset-based allocation methodology does not "capture the flow elements through inventory." A company's inventory balance represents the inventory on-hand at any given point in time (generally, at the end of the year). The value of products that passed through the inventory account on the way to being sold during the year are not included in the ending inventory account – which necessarily means the inventory account does not capture the flow elements. That is, the inventory account does not capture the (usually much greater) value of products that have previously passed through inventory accounts during the year.

61. Canada's assertion also incorrectly assumes that only those costs incurred on products in inventory require financing, because sold products have produced revenues that are in turn used to pay for the cost of producing those sold goods.[47] However, similar to proceeds from a loan, proceeds from sales are entirely fungible and may be used to pay for any of the costs a company incurs (*e.g.* the purchase of fixed assets). Thus, financial costs relate to all the costs a company incurs, including the costs incurred on producing sold goods as well as the costs incurred on goods in inventory. Commerce's COGS-based methodology considers both of these costs, while Canada's methodology considers only the latter.

62. The balance sheet is not the correct place to look for cash flows. The correct place is the cash flows statement from Abitbi's financial statement.[48] This cash flow statement illustrates the numerous sources of cash, most significantly the net cash from operating activities, as well as the numerous uses of cash. This cash flow statement fully supports the concept of fungibility of money and that

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[45] *Final Determination*, Comment 15 (Exhibit CDA-2).

[46] *Final Determination*, Comment 15 (Exhibit CDA-2).

[47] *See* Second Written Submission of Canada, para. 205 (arguing that cost of producing goods need only be financed until payment is received).

[48] *See* Abitbi's Financial Statement p. 34, "Consolidated Statement of Cash Flows" (Exhibit CDA-82).

financing costs cannot be traced to one particular activity of the company, such as the acquisition of assets.

116. Please indicate the advantages/disadvantages in this context, of the two approaches (COGS; asset-based) for allocating interest expenses.

63. Allocation of financial costs based on cost of goods sold results in a reasonable allocation of financial costs to softwood lumber, consistent with Article 2 of the AD Agreement. COGS is a broad category that includes the costs associated with the production of goods in a given year, including assets through the inclusion of depreciation expenses. Because COGS is specific to a given year, it is a reasonable basis upon which to allocate financial costs specific to the same period. Total asset values, on the other hand, relate to assets that exist over multiple years and are, thus, a less appropriate basis upon which to allocate current financial costs. In addition, an allocation of a financial costs based on asset-

Article 2 of the AD Agreement.[57] Moreover, as discussed above, Tembec has failed to provide any credible evidence that its lumber division incurred less G&A than its other divisions.[58]

E. Tembec's divisional statements are not audited and have not been shown to be in accordance with GAAP:

71. Canada argues that the divisional data are audited and reliable. However, the Auditor's Statement clearly indicates that the portion of Tembec' s consolidated balance sheet that was audited does not include the divisional information.[59] Moreover, the United States has shown that under Canadian accounting practices, divisional data are not meant to be an objective measure of costs. Rather, they are meant to enable financial statement users to see the business through the eyes of the management.[60] Finally, the United States has shown that divisional data in Canada do not have to be kept in accordance with Canadian GAAP.[61]

To both parties:

121. Was the "internal accounting methodology" referred to in Comment 33, p. 105, of the Memorandum of 21 March 2002 an allocation methodology "historically utilized by the exporter"? Please refer to the record.

72. Tembec presented no evidence of its historical allocation. In any event, under Article 2.2.1.1 an investigating authority is obligated to consider historical allocations only when such historical allocations are shown to be in accordance with GAAP and to be not distortive. No evidence was presented that Tembec's divisional data were kept in accordance with GAAP.[62] Moreover, the United States has provided evidence that Tembec's divisional data were not required to be kept in accordance with GAAP nor were they required to be objective measure of costs.[63] Thus, even assuming, *arguendo*, that Tembec has historically allocated costs between divisions in the same manner, Commerce was under no obligation to consider Tembec's division-specific G&A data. While historical use may indicate some consistency of compilation or presentation of information over time, historical use alone cannot impart reliability or consistency with GAAP.

I. WEYERHAEUSER:

To the US:

123. It is stated in para. 84 of the US Second Written Submission that:

> **"[g]eneral expenses are, by definition, expenses incurred for the benefit of a corporate group as a whole. They are not specific to one or another product line. A requirement that general expense**

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was incurred (*i.e.*, the POI). Weyerhaeuser never argued before Commerce that this litigation cost should be treated as anything other than a period cost. (*E.g.*, Weyerhaeuser never argued that the settlement cost should be amortized over several years.) Instead, it argued only that the entire cost should be excluded from the allocation of G&A to softwood lumber production.

125. Please comment on the following portion of para. 229 of Canada's Second Written Statement:

> **"Commerce agreed that it was proper to exclude the expense from parent company G&A in its preliminary determination".**

76. Commerce permitted the exclusion of the settlement cost for the *Preliminary Determination* because it was only at verification that Commerce became cognizant of the fact that Weyerhaeuser had excluded the settlement cost from the parent company's reported G&A. In an antidumping investigation verification occurs after the preliminary determination. As discussed in the *Final Determination*, once Commerce considered the settlement cost it determined that the settlement cost waswas

**expenses. The [[ ]] hardboard siding expense is not listed."
[footnote excluded]**

78. The proper characterization of the hardboard siding litigation expense does not depend on the break-out of that expense by Weyerhaeuser US in its books and records. What is relevant is the inherent nature of the expense. A company usually breaks out particular costs because they are significant and require further explanation[74], as was the case with the litigation cost on Weyerhaeuser's consolidated financial statement. However, if a cost item is general in nature, listing it separately from the generic G&A line item does not change its general nature. In point of fact, Weyerhaeuser listed another category of general costs, "integration and closure costs," separately on its financial statement. Canada does not challenge the inclusion of these "integration and closure costs" in the G&A ratio for Weyerhaeuser Canada. Similarly, Commerce's inclusion of a portion of

80. It is important to note that, in the case of Tembec, Commerce examined unaffiliated market prices not for purposes of applying an arm's length analysis but as a starting point in determining the cost of the wood chips. Commerce's approach was consistent with the preference that Article 2.2.1.1

85. As the United States has explained in prior submissions, sales to affiliates are fundamentally different from transfers between divisions. In the case of sales to affiliated companies, the question is whether those sales reflect a true market price, unaffected by the affiliation between the buyer and seller. In the case of internal transfer prices between divisions, the question is whether the internal transfer price used by the company reasonably reflects the company's cost of producing the by-product being used as an offset. In the softwood lumber investigation, Commerce did calculate wood chip offsets in "an even-handed way that is fair to all parties affected." However, contrary to Canada's suggestion, even-handedness did not require it to apply the same methodology to fundamentally different factual situations.

86. It is also worth noting that, where an arm's length test was applied, as in the case of West Fraser, Canada has not challenged *per se* Commerce's arm's length test, only aspects of its application with respect to the wood chip by-product issues. In its First Written Submission, Canada stated that it:

> does not dispute that a determination of non-arm's length pricing could support a determination that books and records containing such prices might not reasonably reflect the costs associated with the production and sale of the product under consideration. In such an instance, the investigating authority might legitimately resort to alternative data and disregard the books and records.[78]

Indeed, Canada has not objected to the use of the arm's length test as it was applied by Commerce to other respondents. Its objection with respect to West Fraser is simply that "an unbiased and objective investigating authority could not have found that West Fraser's recorded chip sales to affiliated purchasers were made at inflated, non-market prices."[79] Commerce's application of an arm's length analysis in reviewing West Fraser' s affiliated wood chip sales was exercised in an even-handed way that was fair to the party affected.

130. Please comment on para. 107 of Canada's Second Oral Statement.

87. The accounting text that Canada cites for the proposition that transactions between affiliated entities should be evaluated in the same manner as transactions between divisions of the same entity

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K. WEST FRASER:

To the US:

> **133. With respect to West Fraser's McBride mill, the following statement is contained in p. 23 of DOC's verification report (Exhibit CDA-110):**
>
> > **"[c]ompany officials explained that the McBride mill had a long-term contract in effect for chip sales when the mill was purchased and that all sales occurred during April and May 2000. They explained that the sales value of chips increased in May 2000 and that they were obligated to sell the chips at the lower contracted price."**
>
> **Did DOC consider the above findings in the context of the investigation? If so, how. Please direct the Panel to the record. The Panel notes that in at least two instances DOC – that is, with respect to Canfor and Tembec – decided not to use certain price data for sales to unaffiliated parties. How did those situations relating to Canfor and Tembec differ, if at all, from that of the McBride mill?**

89. Regarding whether Commerce considered the findings of its verification report, three points are worth noting: (1) West Fraser never argued that its unaffiliated McBride mill sales were made under circumstances that caused them not to reasonably reflect the market values for West Fraser's chips, and in fact, Commerce found at verification that th

chip sales to either affiliated or unaffiliated parties. For these reasons, the facts regarding Tembec are different from those involving West Fraser.

91. With respect to Canfor, Commerce determined that its sales of wood chips from Alberta sawmills to unaffiliated purchasers were distorted due to so-called "contractual arrangements" that did not reflect any market price during the relevant period. The exact nature of Canfor's "contractual arrangements" in Alberta is business confidential information that cannot be disclosed in this proceeding, but it is a completely different factual situation from West Fraser's contract between the McBride mill and certain unaffiliated purchasers.[86] Thus, there was no reliable basis upon which to perform the arm's-length test for Canfor's chip sales in Alberta. In British Columbia, Canfor's sawmills made no sales of chips to unaffiliated parties.[87] With no unaffiliated chip sales in British Columbia, and no reliable results from Alberta that could be applied to British Columbia (different from Tembec's situation), Commerce was left with one option – comparing Canfor's chip sales to affiliates in British Columbia with the weighted-average market price of other respondents' unaffiliated chip sales in British Columbia. The result was that Canfor's affiliated chip sales were found to be at arm's-length prices.

92. These wood chips sales situations of Tembec and Canfor were different from the situation of West Fraser. First, West Fraser was the only one of these three respondents that had chip sales to both affiliated parties and unaffiliated parties in all provinces in which it had chip sales. Second, neither Canfor nor Tembec had contractual issues similar to West Fraser's. There were no contractual issues associated with Tembec 's chip sales, and the contractual issues raised in connection with Canfor's chip sales were completely different factually from West Fraser's issues. Third, although Canada attempts to characterize West Fraser's unaffiliated B.C. chip sales as *de minimis*, those sales were actually sizable.[88] Accordingly, West Fraser was differently situated than Canfor and Tembec. In light of the differences, it was appropriate for Commerce to apply a different evaluation to West Fraser's wood chip offset than it applied to Canfor or Tembec's offset.

L. SLOCAN:(de minimis) Tj 502l0nm thfs

94. Contrary to Canada's suggestion, throughout the course of the investigation, Commerce gave full and fair consideration to the adjustments that Slocan sought for its futures contract revenues. Moreover, contrary to Canada's suggestion, there was no requirement that these amounts be included in the margin calculation absent a demonstration of effect on price comparability, as provided in Article 2.4 of the AD Agreement.

95. As the panel in *Egypt-Rebar* stated, the burden of substantiating a claim for an adjustment rests with the party seeking the adjustment — here, Slocan — not with the investigating authority.[89] The respondent has an affirmative obligation both to assert and to justify the information and arguments required to prove its claims. Not only is this what Article 2.4 provides, it also makes sense, inasmuch as the relevant information will be in the respondent's hands. The investigating authority has no duty to explore or grant adjustments that have neither been requested nor demonstrated by the respondent.

96. Slocan sought two alternative adjustments for its futures contract revenues. First, it asked to have the revenues treated as an offset to direct selling expenses. Alternatively, it asked to have them treated as an offset to financing expenses. Slocan did not request nor did it demonstrate any further alternative basis for an adjustment.

97. Once Commerce evaluated and properly rejected the two bases for adjustment that Slocan requested, Commerce had satisfied its obligation to consider an adjustment. Any other conclusion suggests that respondent companies are free to make general claims of entitlement to adjustment with minimal explanation of the data and that it is the obligation of an investigating authority to find the appropriate basis for adjustment, even though the explanation may be incomplete, unclear, or contradictory. The AD Agreement does not require such an illogical result. The only requirement under Article 2.4 is that due allowance be made, "in each case on its merits," where the difference is "demonstrated" to affect price comparability.[90]

138.

inventory through taking an equal and opposite position in the Random Length Lumber futures market."[98]

104. A demonstration that hedging is used to reduce the risk of holding inventory is *not* a demonstration of an effect on all prices in the market. Slocan's evidence does not demonstrate the *per se* effect on price comparability asserted by Canada. Nor does it demonstrate that Slocan's futures contracts (which did not result in delivery) affected any lumber prices included in our analysis. Contracts that resulted in actual delivery to Slocan's customers (in fact, the only sales for which prices were affected) were included as sales in the calculation of Slocan's dumping margin. But the profits earned on contracts that were sold and did not result in lumber delivery are not a proper basis for adjustments for terms and conditions of sale. Accordingly, Commerce appropriately rejected Slocan's requested adjustment.

To both parties:

> **140. Please provide in diagram format the company structure of Weyerhaeuser International Inc., showing the relationship between Weyerhaeuser Canada, Weyerhaeuser US and Weyerhaeuser International Inc. In addition, could Canada**