

3.6.1.4.2 Remanufactured Products

Commerce decided not to exclude remanufactured products from the investigation. First, Commerce noted that the investigation covered softwood lumber products, including remans. Second, Commerce noted that it had no precise definition of remans or “reasonable, objective criteria” that it could follow to separate remans from other softwood products in excluding them from the investigation. Third, Commerce found the list of remanufactured products excluded from the MOU to be unpersuasive since the list resulted from a series of negotiations and did not legally define a class of merchandise that should be excluded. Fourth, Commerce determined that stumpage holders produced many reman products; consequently, at least some remanufacturers benefited directly from the stumpage programs. Commerce decided to collect duties based upon the first mill value of the lumber used to make the remans.

3.6.1.4.3 Company Exclusion Requests

Commerce decided that it was impracticable to review all the 334 company exclusion requests. Commerce did exclude 15 companies that used exclusively or primarily U.S.-origin logs.

Postscript

The Uruguay Round Agreements Act of 1995 made two significant clarifications of U.S. countervailing duty law regarding the issues under review by the panel on softwood lumber. With respect to the two issues—specificity and the so-called “effects test”—pre-URAA U.S. law, regulation and procedure were often vague, confusing and contradictory. Commerce applied different tests in different cases. The Statement of Administrative Action to the URAA, and the URAA itself, clarified that in determining *de facto* specificity, Commerce would stop its analysis if it found that a single factor justified a specificity finding.

Furthermore, the Tariff Act of 1930 was amended to explicitly state that Commerce did not have to perform an “effects test” in order to determine that a subsidy program is countervailable.

According to the SAA, this amendment was made to prevent future misinterpretations of U.S. countervailing duty law, such as those made by the softwood lumber Binational Panel. Much effort was expended by Canada in attempting to persuade the U.S. administration to either eliminate or ameliorate these amendments. It was thought, at least by certain parties, that elimination of the “effects test” in particular would have the result of overturning the softwood lumber panel. These attempts were unsuccessful.