

However, as the Department of Commerce has seen fit to accept a countervailing duty petition, the following comments are made without prejudice to our fundamental position as stated above.

It is the view of the Canadian authorities that this determination is unacceptable. It is flawed in law, inconsistent with established U.S. practice and, in some important respects, based on erroneous assumptions.

The Department of Commerce has reversed itself on two fundamental points from its determination in the earlier 1982-83 investigation. One of these relates to the question of general availability, the other to that of preferential rates.

With respect to the issue of general availability, Commerce has now ruled, in contrast to its previous determination, that stumpage programs in the four main producing provinces of Alberta, British Columbia, Ontario and Quebec are targeted to a specific group of industries. It bases this ruling on two grounds. The first is that the provincial governments possess considerable discretion in the allocation of stumpage licenses and that this discretion tends to be exercised in favour of softwood lumber mills. In fact, provincial discretion is not exercised so as to favor the softwood lumber industry or any other industry utilizing the resource. Stumpage rights are available on equal terms to all companies which can exploit the resource on an economic basis.

The second ground is that, of the various users of stumpage, furniture manufacturers own negligible rights while the lumber and pulp and paper companies tend to be horizontally integrated into single enterprises. While it is true that today few furniture companies hold stumpage rights, this is because of market factors and the economics of specialization; stumpage rights are available to them on equal terms with other users.

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