

subsidy is contingent upon export performance." The GOC payments under this guarantee are contingent upon sales to the eligible foreign markets.

We further preliminarily determine that any subsidies conferred as a result of these lending guarantees are tied to the markets that received the guarantees. Consequently, in accordance with 19 CFR 351.525(b)(5)(i), any benefits would be attributed to export sales to those markets. Because sales to the United States do not benefit from these guarantees, we find no countervailable subsidies on the subject merchandise under this program.

B. Rail Freight Revenue Cap

In August 2000, the GOC implemented an annual cap on the revenues (the "revenue cap") that the CN and CP can earn from the transportation of certain Western Division grains. The grains subject to the revenue cap are set out in Schedule II and include the subject merchandise. The revenue cap only applies to grain movements on CN or CP lines from "a point on any line west of Thunder Bay or Armstrong, Ontario, to (a) Thunder Bay or Armstrong, Ontario, or (b) Churchill, Manitoba, or a port in British Columbia for export, but does not include the carriage of grain to a port in British Columbia for export to the United States for consumption in that country (the "capped routes")." (*See* Canada Transportation Act, Division VI, Transportation of Western Grain, Section 147.)

The revenue cap is calculated using a formula that takes into consideration the following: the railway's revenue for the movement of grain in the base year (crop year 2000–2001); the number of tons of grain moved in the base year and the actual year; the average length of haul in miles for the base year and actual year; and the volume-related composite price index. (*See* Canada Transportation Act, Division VI, Transportation of Western Grain, Section 151.) If CN's or CP's revenues for the movement of grain on capped routes in a crop year exceed the railway's maximum revenue cap entitlement, the railway must pay refunds according to a specified formula.

Under section 771(5)(B)(iii) of the Act, a subsidy exists when, *inter alia*, a government entrusts or directs a private entity to make a financial contribution that confers a benefit. As discussed in the "Provision of Government-Owned and Leased Railcars" section, above, we preliminarily find that the GOC is entrusting or directing the railways to

provide a financial contribution, specifically rail transportation services, to the CWB. *See* sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act.

Further, we find that the revenue cap is limited to the transportation of Western Division grain and, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act.

We preliminarily determine, however, that the CWB did not receive any benefits from the revenue cap within the meaning of section 771(5)(E)(iv) of the Act. This is because, as discussed below, there is no evidence that, as a result of the revenue cap, the railways are providing the rail services to the CWB for less than adequate remuneration. Accordingly, we preliminarily determine that the rail freight revenue cap is not a countervailable subsidy.

Our reasons for preliminarily determining that the revenue cap does not confer a benefit to the CWB are threefold. First, in the two crop years that the revenue cap has been in place, CN's and CP's earnings subject to the revenue cap have fallen significantly short of their respective revenue caps. In 2000/01 and 2001/02, respectively, CN earned C\$3 million and C\$13.5 million less than the cap, while CP earned C\$2.6 million and C\$8.7 million less. Second, the railways are allowed to increase or create fees for services that are not subject to the revenue cap. This allows the railways to increase revenue from Western grain movements, irrespective of the revenue cap. Examples of these exempted service fees are demurrage, storage, performance penalties, additional switching and staging. Lastly, on behalf of the GOC, the Canadian Transportation Agency ("CTA") conducted a study to compare per ton revenue for capped and non-capped movements. In the study, the CTA used three methods to compare non-revenue cap to revenue cap movements. The CTA compared revenue per ton mile for (1) Eastern Canada non-cap movements versus Western Canada revenue cap movements, (2) Western Canada non-cap movements versus Western Canada revenue cap movements, and (3) Eastern Canada versus Western Canada movements which originate as a revenue cap movement, but continue east and become non-cap movements. This generated nine different comparisons, eight of which showed that the revenue cap did not affect the rates per ton mile that CP and CN charged for the transportation of grain.

The petitioners have asserted that the revenue cap conferred a benefit on the CWB based on two sources which state that the August 1, 2000 revenue cap

would be set at a level leading to "an estimated 18 per cent reduction in grain freight rates from 2000–2001 levels," and an "immediate 18 per cent reduction in railway revenues."

Petitioners acknowledge that the actual rail rates did not decrease by the full 18 percent. Even if they did, we preliminarily find that the 18 percent figure is not a useful measure of whether the revenue cap constituted a countervailable benefit. The pre-revenue cap freight rates were regulated by the GOC and, therefore, do not provide an accurate benchmark for adequate remuneration. Also, the comparison cited by the petitioners predates our POI. For these reasons, and in light of the CTA study, we do not believe the 18 percent reduction is a useful benchmark for determining whether the revenue cap conferred a benefit upon the CWB.

C. Maintenance of Uneconomic Branch Lines

Effective August 2000, under the Canada Transportation Act, as amended, a railway company that discontinues a grain-dependent branch line must provide compensation to the municipality or district through whose territory the grain-dependent branch line passes in the amount of C\$10,000 per mile for each mile of line within the municipality or district, for three years.

We preliminarily determine that the payment for discontinuance of a grain-dependent branch line ("GDBL payment") does not constitute a countervailable subsidy. Under section 771(5)(B)(iii) of the Act, a subsidy exists when, *inter alia*, a government entrusts or directs a private entity to make a financial contribution that confers a benefit. With respect to GDBL payments, evidence provided by the GOC, as discussed below, indicates that the cost of maintaining a grain-dependent branch line far outweighs the cost of closure. Decisions on whether to maintain or close such lines are made irrespective of GDBL payments. Hence, we find that the GOC is not directing and/or entrusting the railways to provide continued rail transportation services over grain-dependent branch lines.

The GOC cites to the 1999 Branch Line Review that studied the economic costs to the grain handling and transportation system of discontinuing the operation of 22 branch lines totaling 698.9 miles and affecting the delivery of 1,367,560 tons of grain. The study examined several grain handling and transportation scenarios and, "[i]n each of the twenty-two cases substantial savings will result when the operation of all of these lines are discontinued and