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DEPARTMENT OF COMMERCE

International Trade Administration

C-122-858

Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain softwood lumber products (softwood lumber) from Canada. The period of investigation is January 1, 2015, through December 31, 2015.

DATES: Effective [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Lana Nigro (Tolko), Toby Vandall (Canfor), Justin Neuman (JDIL), Patricia Tran (West Fraser), and Kristen Johnson (Resolute), AD/CVD Operations, Offices I and III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1779, (202) 482-1664, (202) 482-0486, (202) 482-1503, and (202) 482-4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this

investigation on December 22, 2017.<sup>1</sup> On February 2, 2017, the Department postponed the preliminary determination of this investigation and the revised deadline is now April 24, 2017.<sup>2</sup>

On April 13, 2017, the Department preliminarily determined that critical circumstances exist with respect to certain companies.<sup>3</sup> For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.<sup>4</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The product covered by this investigation is softwood lumber from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

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<sup>1</sup> *See Certain Softwood Lumber Products from Canada: Initiation of Countervailing Duty Investigation*, 81 FR 93897 (December 22, 2016) (*Initiation Notice*).

<sup>2</sup> *See Certain Softwood Lumber Products from Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 9055 (February 2, 2017).

<sup>3</sup> *See Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances*, signed April 13, 2017 (*Preliminary CC Determination*).

<sup>4</sup> *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

## Scope Comments

In accordance with the preamble to the Department's regulations,<sup>5</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).<sup>6</sup> Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice* as well as on additional language proposed by the Department. On March 29, 2017, a letter presenting a proposal for company exclusions was filed on behalf of the Government of Canada (GOC), Canadian provincial and territorial governments, as well as the Canadian industry associations.<sup>7</sup> The Department finds that it lacks the authority to conduct the requested company exclusion process in the context of this countervailing duty investigation (CVD) on softwood lumber from Canada.<sup>8</sup>

With respect to other proposed scope exclusions, including the request to exclude merchandise from certain provinces, the Department is inviting comments on those proposed exclusions and will incorporate the decisions into the final CVD and AD determinations after considering any relevant comments submitted in case and rebuttal briefs. Comments on any proposed scope exclusions are due no later than seven days of publication of this notice in the Federal Register. Please note that the Department will not accept any new factual information in these submissions. The Department intends to set the same deadline on the record of the companion AD investigation. For further information regarding proposed scope excusions, *see* the Preliminary Decision Memorandum accompanying this notice.

## Methodology

The Department is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, the Department preliminarily

determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>9</sup>

### Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), the Department is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of softwood lumber from Canada based on a request made by the petitioner.<sup>10</sup> Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than September 6, 2017, unless postponed.

### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, the Department shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the

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<sup>5</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>6</sup> See *Initiation Notice*.

<sup>7</sup> See letter from the Government of Canada, “Proposal for Company Exclusions,” dated March 29, 2017; *see also* letter from the Government of New Brunswick, “Softwood Lumber from Canada: Proposals for Product- or Company-Based Exclusions from the CVD Investigation,” dated March 31, 2017; letter from Government of British Columbia, “Certain Softwood Lumber Products from Canada: Comments in Support of Clarifying and Exclusionary Language Proposed by Canada Regarding the Scope of these Investigations,” dated April 3, 2017.

<sup>8</sup> See Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated April 24, 2017.

<sup>9</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>10</sup> See Letter from the petitioner, “Certain Softwood Lumber Products from Canada: Request for Alignment of the Countervailing Duty Final Determination with the Companion Antidumping Duty Final Determination” dated April 13, 2017.

estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, the Department calculated individually estimated countervailable subsidy rates for Canfor Corporation (Canfor), J.D. Irving, Limited (JDIL),<sup>11</sup> Resolute FP Canada Inc. (Resolute), Tolko Marketing and Sales Ltd. (Tolko), and West Fraser Timber Co. Ltd. (West Fraser), that are not zero, *de minimis*, or based entirely on facts otherwise available. The Department calculated the all-others rate using a weighted-average of the individually estimated subsidy rates calculated for the examined respondents using each company's business proprietary data for the merchandise under consideration.<sup>12</sup>

#### Preliminary Determination

The Department preliminarily determines that the following estimated countervailable subsidy rates exist:

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<sup>11</sup> See *MacLean-Fogg Co. v. United States*, 753 F.3d 1237 (Fed. Cir. 2014) (holding that voluntary respondents are considered "individually investigated" for purposes of calculating the all-others rate). The Department accepted JDIL as a voluntary respondent in this investigation.

<sup>12</sup> See Memorandum to the File, "Calculation of the "All-Others" Rate in the Preliminary Determination of the Countervailing Duty Investigation of Softwood Lumber Products from Canada" (April 24, 2017).

Company	Subsidy Rate
Canfor Corporation and its cross-owned affiliates <sup>13</sup>	20.26 percent
J.D. Irving, Limited and its cross-owned affiliates <sup>14</sup>	3.02 percent
Resolute FP Canada Inc. and its cross-owned affiliates <sup>15</sup>	12.82 percent
Tolko Marketing and Sales Ltd. and its cross-owned affiliates <sup>16</sup>	19.50 percent
West Fraser Mills Ltd. and its cross-owned affiliates <sup>17</sup>	24.12 percent
All-Others:	19.88 percent

### Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the rates indicated above.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a)

<sup>13</sup> The Department preliminarily has found the following companies to be cross-owned with Canfor Corporation: Canadian Forest Products, Ltd., and Canfor Wood Products Marketing, Ltd.

<sup>14</sup> The Department preliminarily has found the following companies to be cross-owned with JDIL: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., St. George Pulp & Paper Limited, and Irving Paper Limited.

<sup>15</sup> The Department preliminarily has found the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Resolute Sales Inc., Abitibi-Bowater Canada Inc., Bowater Canadian Ltd., Resolute Forest Products Inc., Produits Forestiers Maurice S.E.C., and 9192-8515 Quebec Inc.

<sup>16</sup> The Department preliminarily has found the following companies to be cross-owned with Tolko: Tolko Industries Ltd., and Meadow Lake OSB Limited Partnership.

<sup>17</sup> The Department preliminarily has found the following companies to be cross-owned with West Fraser: West Fraser Timber Co. Ltd., West Fraser Alberta Holdings, Ltd., Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Sunpine Inc., and Sundre Forest Products Inc.

the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. As discussed in *Preliminary CC Determination*, the Department preliminarily found that critical circumstances exist for imports of subject merchandise produced and/or exported by JDIL and the companies subject to the All-Others rate.<sup>18</sup> Accordingly, in accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

#### Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement or within five days of the date of this notice in accordance with 19 CFR 351.224(b).

#### Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>19</sup> Pursuant

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<sup>18</sup> See *Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances*, signed April 12, 2017 (*Preliminary CC Determination*).

<sup>19</sup> See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined and interested parties will be notified by the Department, via letter. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

#### International Trade Commission Notification

In accordance with section 703(f) of the Act, the Department will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.



Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

*/S/ Ronald K. Lorentzen*

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

April 24, 2017

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Date

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation is softwood lumber, siding, flooring and certain other coniferous wood (“softwood lumber products”). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (“HTSUS”). This chapter of the HTSUS covers “Wood and articles of wood.” Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44:

4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.90.25.00.

Subject merchandise as described above may also be classified as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts under the following ten-digit HTSUS subheadings in Chapter 44:

4415.20.40.00; 4415.20.80.00; 4418.90.46.05; 4418.90.46.20; 4418.90.46.40; 4418.90.46.95; 4421.90.70.40; 4421.90.94.00; and 4421.90.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments and Requests for Exclusion
- IV. Scope of the Investigation
- V. Subsidies Valuation
- VI. Analysis of Programs
- VII. Calculation of the All-Others Rate
- VIII. ITC Notification
- IX. Disclosure and Public Comment
- X. Verification
- XI. Conclusion