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January 9, 2017

Case Nos.: A-122-857

C-122-858

Total Pages: 15

Investigation

ITA/EC/Office III

**PUBLIC DOCUMENT**

## **VIA ELECTRONIC FILING**

The Honorable Penny Pritzker  
Secretary of Commerce  
International Trade Administration  
Enforcement & Compliance  
APO/Dockets Unit, Room 18022  
14th Street & Constitution Avenue, NW  
Washington, DC 20230

**Re: Certain Softwood Lumber Products from Canada: Scope Comments of the Government of British Columbia**

Dear Secretary Pritzker:

On behalf of the Government of British Columbia, we hereby submit the following comments concerning the scope of the above-referenced investigations. This letter is timely filed pursuant to the Department's Memoranda to the File.<sup>1</sup>

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<sup>1</sup> See Memorandum to the File from Robert Galantucci, International Trade Analyst, AD/CVD Operations, Office IV, "Antidumping Duty Investigation: Certain Softwood Lumber Products from Canada – Extension of Scope Comment Deadline," dated January 3, 2017; Memorandum to the File From Robert Galantucci, International

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As an initial matter, the Government of British Columbia reiterates its support for the scope exclusion requests made in Canada's December 7, 2016 Consultations Paper, including the requested scope exclusion for softwood lumber produced from First Nations Treaty Settlement Lands, among other private lands, and lumber products made from Western Red Cedar, which is used for applications other than the dimensional framing lumber products primarily at issue in this case.<sup>2</sup>

The Government of British Columbia also respectfully reiterates, and provides more information concerning, Canada's request that the Department exclude from the scope of the above-referenced investigations certain high-value softwood lumber products. Specifically, the Government of British Columbia hereby expresses its support for the Government of Canada's request, as stated in the Consultation Paper, to exclude from the scope of the investigations softwood lumber products valued above U.S. \$500/thousand board feet ("MBF"), with one modification.<sup>3</sup> The Government of British Columbia submits that such a scope exclusion should apply to *all* softwood lumber products valued above \$500/MBF, regardless of their applications (and not merely to those high-valued softwood lumber products with non-structural applications). A scope exclusion on this basis would be more readily administrable by the Department and by U.S. Customs and Border Protection ("CBP").

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Trade Analyst, AD/CVD Operations, Office IV, "Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada – Extension of Scope Comments Deadline," dated January 4, 2017.

<sup>2</sup> See Letter from Hughes Hubbard & Reed LLP to the Sec'y of Commerce, "Submission of Consultations Paper," dated December 7, 2016 ("Consultations Paper"), Attachments 4 and 6.

<sup>3</sup> Consultations Paper, Attachment 5.

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The exclusion of high-value lumber products is reasonable and appropriate for several reasons. First, these products do not compete with the Spruce-Pine-Fir (“SPF”) dimensional framing softwood lumber products that are at the center of the Petition’s allegations.<sup>4</sup> Such high-value softwood lumber products are typically produced for specialty applications, are subjected to more rigorous testing, and are traded through distinct channels of distribution separate from those used for the SPF dimensional framing products that are at the center of the Petition’s allegations.

Given the pace at which these high-value products are evolving, unlike the case for SPF dimensional framing products, it is not possible to specify all their unique characteristics and variations. Such high-value products are typically engineered, subjected to value-added processing techniques, and often entail the lamination of separate components into a single beam, timber, or other structural or non-structural final product. What these high-value products all have in common, however, is that they are far more complicated to manufacture than the softwood lumber products on which the Petition is focused, and therefore much more expensive. A value-based scope exclusion of \$500/MBF is therefore the most administratively convenient way to effectuate the requested scope exclusion.

Second, the exclusion of high-value softwood lumber products would be consistent with the 2006 Softwood Lumber Agreement between the Government of Canada and the Government

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<sup>4</sup> As also explained in today’s submission by the Government of Canada, the Petition refers repeatedly to SPF dimensional framing products.

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of the United States of America (“2006 SLA”).<sup>5</sup> Article 6 of the 2006 SLA recognized that separate treatment is warranted for high-value softwood lumber products in light of their distinct manufacturing processes and markets. Thus, consistent with the 2006 SLA, which governed the importation of softwood lumber products from Canada into the United States through much of the past decade, the Department should also recognize that high-value softwood lumber products are fundamentally distinct from SPF dimensional framing lumber, and exclude these products from the scope of the investigations.

Third, the exclusion of high-value softwood lumber products would not significantly impact the Department’s analysis, as these products are, to the best of the Government of British Columbia’s knowledge, imported into the United States in relatively small quantities. Indeed, the high-value softwood lumber products that would be excluded from the scope of the investigations pursuant to the proposed \$500/MBF threshold are not, consistent with their status as specialized, value-added products, included in the SPF dimensional framing lumber price indices such as the *Random Lengths* Framing Lumber Composite Index. Moreover, at current and forecast prices for the widely traded SPF products captured by the *Random Lengths* Index, it is not conceivable that a value-based exclusion of \$500/MBF would capture any of the SPF dimensional framing lumber on which the Petition’s allegations are focused. As can be seen in the chart provided at Attachment 1, showing the *Random Lengths* Framing Lumber Composite Index for the period 2005 through 2021 (projected), at no point does the composite price approach \$500/MBF. The Attachment 1 chart also includes *Random Lengths*’ Western SPF

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<sup>5</sup> See Petition Exhibit 3.

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composites for several grades of framing lumber, further confirming that the proposed \$500/MBF threshold would not impact scope coverage as to those softwood lumber products at the heart of these proceedings.

Finally, should the Department's investigations result in antidumping or countervailing duty orders, CBP would have no difficulty in administering the requested exclusion. CBP has considerable past experience administering duties based on transaction value, including in the context of agreements suspending antidumping and countervailing duty investigations,<sup>6</sup> and would be able to apply the requested value-based exclusion with no difficulty, particularly because the sought exclusion would not be conditioned on the downstream applications of the high-value products.

For the foregoing reasons, the Government of British Columbia respectfully requests that the Department exclude from the scope of its investigations softwood lumber products valued above \$500/MBF, in addition to the other above-specified products that are also addressed in Canada's Consultations Paper (*i.e.*, lumber produced from Western Red Cedar and lumber produced from private land logs, including those harvested from First Nations Treaty Settlement Lands).

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<sup>6</sup> See, e.g., *Suspension of Antidumping Investigation; Fresh Tomatoes from Mexico*, Appendix A (establishing reference prices above which the subject merchandise must be sold into the United States), provided at Attachment 2.

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In accordance with the Department's regulations, we are filing this submission electronically via ACCESS at <http://access.trade.gov>. Copies of this submission are being served today on parties as indicated in the attached certificate of service. If you have any questions or desire any additional information, please feel free to contact the undersigned.

Respectfully submitted,

/s/ Spencer S. Griffith

Spencer S. Griffith

Bernd G. Janzen

Christopher T. Timura

Kimberly M. Myers

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Yujin K. McNamara

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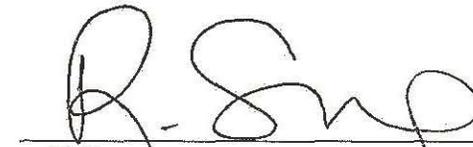
Dallas A. Woodrum

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*Counsel to the Government of British Columbia*

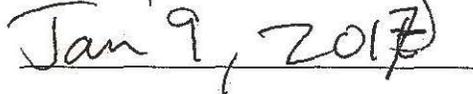
## GOVERNMENT CERTIFICATION

I, Rebecca Ewing, currently employed by the Government of British Columbia, certify that I prepared or otherwise supervised the preparation of the attached submission of Scope Comments, filed on January 9, 2017, pursuant to the countervailing duty investigation of Softwood Lumber from Canada (C-122-858). I certify that the public information and any business proprietary information of the Government of British Columbia contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of demonstrating the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

*Signature:*



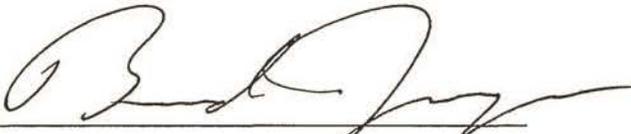
*Date:*



LEGAL REPRESENTATIVE CERTIFICATION

I, Bernd G. Janzen, with Akin Gump Strauss Hauer & Feld LLP, counsel to the Government of British Columbia, certify that I have read the attached submission of the Government of British Columbia's Scope Comments, filed on January 9, 2017, pursuant to the countervailing duty investigation of Certain Softwood Lumber Products from Canada (C-122-858). In my capacity as counsel of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

*Signature:*



*Date:*

1/09/2017

**PUBLIC CERTIFICATE OF SERVICE**  
**Softwood Lumber from Canada**  
**Case Nos. A-122-857 and C-122-858**  
**Investigation**

I hereby certify that, on this day, copies of this submission were served via first class mail to the following parties or by email per prior agreement when marked with an asterisk:

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On behalf of the British Columbia Lumber  
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the Coast Forest Products Association and the  
Council of Forest Industries, and their  
members

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On behalf of the Committee Overseeing  
Action for Lumber International Trade  
Investigations or Negotiations, which is  
comprised of: U.S. Lumber Coalition, Inc.,  
Collum's Lumber Products, L.L.C., Hankins,  
Inc., Potlach Corporation, Rex Lumber  
Company, Seneca Sawmill Company, Sierra  
Pacific Industries, Stimson Lumber Company,  
Swanson Group, Weyerhaeuser Company, the  
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January 9, 2016  
Date

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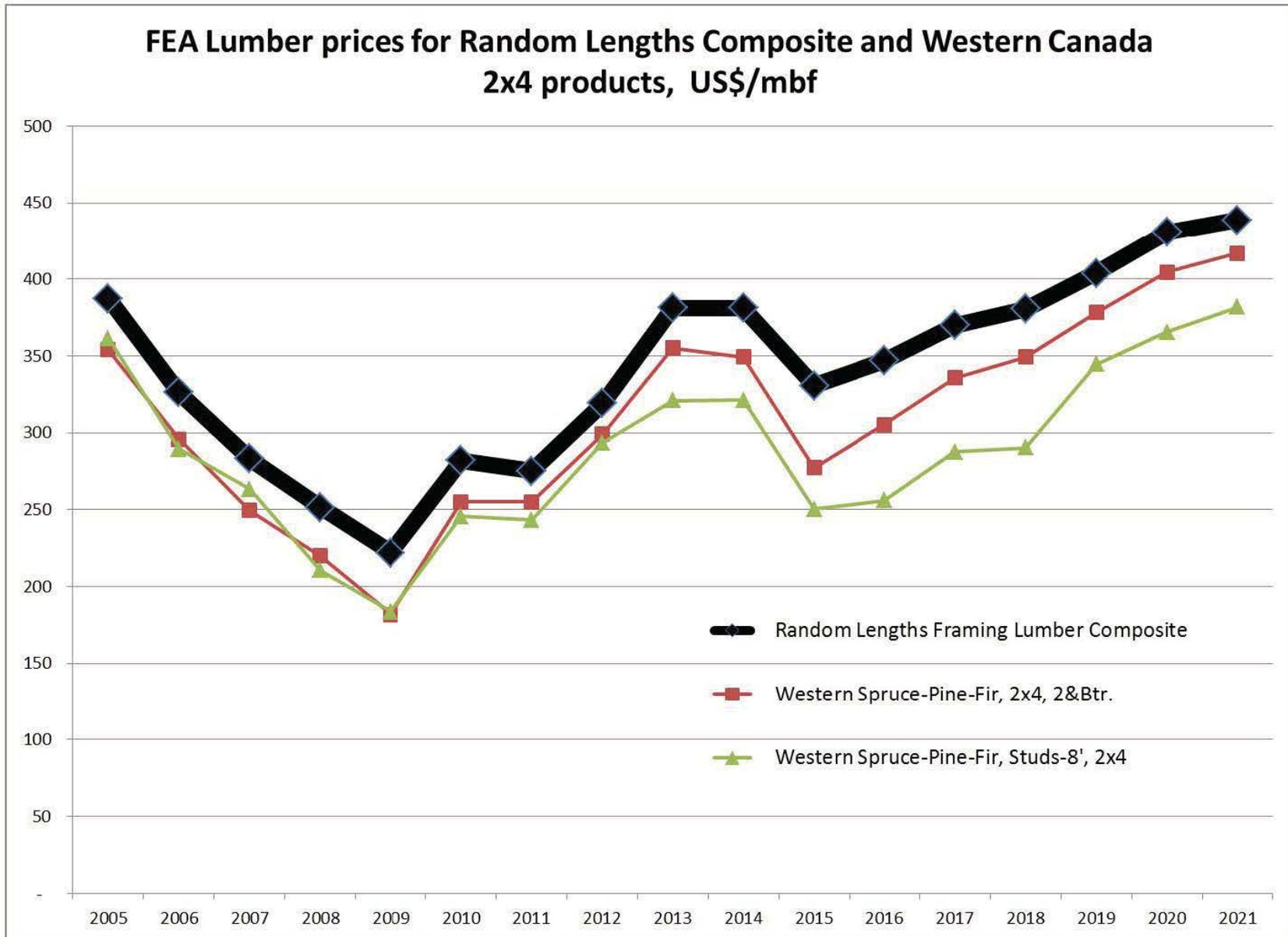
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/s/ Jared T. Cail \_\_\_\_\_  
Jared T. Cail  
Akin Gump Strauss Hauer & Feld LLP

# Attachment 1



# Attachment 2

## APPENDIX A – SUSPENSION OF ANTIDUMPING INVESTIGATION - FRESH TOMATOES FROM MEXICO – REFERENCE PRICE

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department and the signatory producer/exporters of the subject merchandise hereby agree to adopt the reference prices calculated based on a similar methodology to that outlined in the November 1, 1996, agreement suspending the antidumping investigation involving fresh tomatoes from Mexico, as amended on August 14, 1998. See Suspension of Antidumping Investigation; Fresh Tomatoes from Mexico, 61 FR 56618, 56620 (November 1, 1996), October 28, 1996, Memorandum to Robert S. LaRussa titled “The Prevention of Price Suppression or Undercutting of Price Levels in the Suspension Agreement Covering Fresh Tomatoes from Mexico,” Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico, 63 FR 43674 (August 14, 1998), and Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico, 68 FR 62281 (November 3, 2003). For purposes of this Agreement, the reference prices have been updated to reflect recent pricing data, as well as to include additional reference prices for fresh tomatoes grown in a controlled environment and specialty tomatoes. For purposes of this Agreement, controlled environment tomatoes are limited to those tomatoes grown in a fully-enclosed permanent aluminum or fixed steel structure clad in glass, impermeable plastic, or polycarbonate using automated irrigation and climate control, including heating and ventilation capabilities, in an artificial medium using hydroponic methods. For purposes of this Agreement, specialty tomatoes include grape, cherry, heirloom and cocktail tomatoes.

Accordingly, the reference prices are as follows:

July 1 through October 22	Open Field and Adapted Environment, other than specialty	0.2458
	Controlled Environment, other than specialty	0.3251
	Specialty - loose	0.3568
	Specialty - packed	0.4679
October 23 through June 30	Open Field and Adapted Environment, other than specialty	0.31
	Controlled Environment, other than specialty	0.41
	Specialty – loose	0.45
	Specialty - packed	0.59

These reference prices will remain in effect unless modified in accordance with the provisions of paragraph IV.F of the Agreement or as described below. The Department reserves the right to modify its methodology in establishing a reference price, if appropriate, and will do so in accordance with the provisions of paragraph IV.F of the Agreement.

The term “reference price” refers to the price F.O.B. from the Selling Agent. The reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (e.g., McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm’s-length transaction. The chart below contains examples of certain minimum common trucking charges based on average U.S. long haul trucking rates calculated by the USDA observed during January through September 2012.

<b>F.O.B. Nogales to:</b>	Los Angeles	New York	Chicago
Rate (\$US) / Per Truckload	\$1337	\$5988	\$4396

Parties should refer to “Agricultural Refrigerated Truck Quarterly”, which can be found at <http://www.ams.usda.gov/fv/mnrcs/fvwires.htm> to obtain examples of common trucking charges for prior seasons and to Market News Truck Rate Report, <http://www.ams.usda.gov/mnreports/fvwtrk.pdf> to obtain common trucking charges pertinent to the current season. Where the Selling Agent sells through an affiliated party, the transfer price from the Selling Agent to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (e.g., trucking charges) that reflect arm’s-length costs. For guidance on the trucking-charge markup for such resales, parties should also refer to Market News Truck Rate Report, <http://www.ams.usda.gov/mnreports/fvwtrk.pdf>.

During the Department’s verifications of parties handling signatory merchandise it will ascertain whether: 1) the handling expenses beyond the point of entry into the United States are added to the reference price and reflect the actual cost for an arm’s-length transaction; and 2) the transfer price from the Selling Agents to their affiliates are at or above the applicable reference price and that any subsequent sale to an unaffiliated party includes the appropriate markups (e.g., trucking charges) that reflect arm’s-length expenses.

The reference price for each type of box shall be determined based on the average weights stated in the chart contained in Appendix C of the Agreement.