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**VIA ELECTRONIC FILING**

The Honorable Penny S. Pritzker  
Secretary of Commerce  
U.S. Department of Commerce  
Attn: Enforcement and Compliance  
APO/Dockets Unit, Room 18022  
14th Street and Constitution Ave., N.W.  
Washington, D.C. 20230

Re: Certain Softwood Lumber Products from Canada:  
Comments on Product Coverage and Scope of the Investigations

Dear Secretary Pritzker:

In its December 22, 2016 Notices of Initiation in the above-referenced investigations,<sup>1</sup> the Department of Commerce (the “Department”) invited comments on product coverage, setting a deadline of January 4, 2017, for initial scope comments and January 17, 2017, for rebuttal comments. On December 30, 2016, the Government of Canada requested an extension of five days to submit comments and supporting factual information. On January 4, 2017, the

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<sup>1</sup> *Certain Softwood Lumber Products from Canada: Initiation of Less-Than-Fair-Value Investigation*, 81 Fed. Reg. 93,892, 93,892 (Dec. 22, 2016); *Certain Softwood Lumber Products From Canada: Initiation of Countervailing Duty Investigation*, 81 Fed. Reg. 93,897, 93,898 (Dec. 22, 2016).

Department granted the extension, designating January 9, 2017, as the new deadline for initial scope comments and January 19, 2017, as the new deadline for rebuttal comments. These initial comments are thus timely filed by the due date (January 9, 2017), as extended by the Department.

The Department typically evaluates requests for scope exclusions under the standards set forth in 19 C.F.R. § 351.225.<sup>2</sup> As relevant here, the Department first considers “{t}he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the {International Trade} Commission.”<sup>3</sup> If the foregoing criteria are not dispositive, the Department employs the *Diversified Products* test<sup>4</sup> by considering the following factors: “(i) The physical characteristics of the product; (ii) The expectations of the ultimate purchasers; (iii) The ultimate use of the product; (iv) The channels of trade in which the product is sold; and (v) The manner in which the product is advertised and displayed.”<sup>5</sup>

At its core, this case is about Spruce-Pine-Fir (“SPF”) dimensional lumber, which the Petition references myriad times across all three of its volumes.<sup>6</sup> The product scope of the investigations, however, appears to encompass a wide range of products that have very different physical characteristics than SPF dimension lumber, are advertised and displayed differently than

<sup>2</sup> The regulation “contains rules regarding scope rulings, requests for scope rulings, procedures for scope inquiries, and standards used in determining whether a product is within the scope of *an order or suspended investigation*.” 19 C.F.R. § 351.225 (emphasis added). In practice, the Department has relied on the same regulation when analyzing scope comments submitted prior to a preliminary determination. See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 Fed. Reg. 51,788, 51,789 (Sept. 5, 2008).

<sup>3</sup> 19 C.F.R. § 351.225(k)(1).

<sup>4</sup> *Diversified Prods. Corp. v. United States*, 572 F. Supp. 883 (Ct. Int’l Trade 1983).

<sup>5</sup> 19 C.F.R. § 351.225(k)(2).

<sup>6</sup> See, e.g., Pet. Vol. I at 36 (“The demand for softwood lumber is derived primarily from home construction, remodeling, and repairs.” (footnote omitted)); *id.* at 47 (relying on the *Random Lengths Framing* Lumber Composite Index as the barometer for softwood lumber prices); Pet Vol. II at 19-20 (characterizing production process for dimension lumber); Pet. Vol. III at 33-34 (discussing use of “SPF timber prices” in Department’s previous calculations of benchmarks).

SPF dimension lumber, and are purchased with very different expectations, for different end uses, and through different channels of trade than SPF dimension lumber. The Petition makes few—if any—reference to the vast majority of non-SPF dimension lumber products potentially included within the Petition’s sweeping scope. Even beyond the breadth of the apparently intended scope, the scope as drafted creates ambiguity as to a tremendous range of products that were clearly never intended to be part of these proceedings. The Department should expressly exclude products that do not belong in these investigations and should clarify the scope, as discussed below.

Petitioner and Respondents have engaged in productive discussions about potential clarifications or express exclusions from the scope, and Respondents understand that Petitioner may be willing to agree to certain of the exclusions referenced or requested below. Petitioner, Respondents, and the Department share an interest in avoiding unnecessary ambiguity in the definition of the scope for these investigations. The Government of Canada looks forward to Petitioner’s responses to the clarifications and exclusions requested below and by other interested parties and would welcome further discussions with Petitioner and the Department directed towards aligning the defined scope with the products at issue in these investigations.

#### **I. The Department Should Adopt the Scope Exclusions Requested by Other Interested Parties**

Several interested parties have submitted comments on scope to the Department. The Government of Canada generally supports efforts of all parties to refine and narrow the scope of these investigations. Having been apprised of a number scope clarifications or exclusions being requested by other interested parties, the Government of Canada would like to emphasize its support for the following positions:

**Western Red Cedar** should be excluded from the scope of these investigations, as explained in Attachment 6 to Canada's Consultations Paper and as set forth in comments submitted by Western Forest Products Inc. and Interfor Corporation. **Eastern White Pine** should also be excluded from the scope of these investigations for the reasons set forth in Attachment 1 to Canada's Consultations Paper and as articulated in the comments submitted by the Québec Forest Industry Council and the Ontario Forest Industries Association. Canada also supports the exclusion **of lumber produced using logs harvested in the United States**, as explained in Attachment 3 to Canada's Consultations Paper and set forth in the comments submitted by the Québec Forest Industry Council.

**Bedframe components** should also be excluded from the scope of these investigations, as set forth in Attachment 2 to Canada's Consultation Paper, and as requested in the submissions by Resolute Forest Products Inc. and by BarretteWood Inc. and EACOM Timber Corporation. Similarly, **components of crating ladders** should be excluded for the reasons articulated by BarretteWood Inc. Properly defined, these components fall outside the scope of the investigations. Crating ladder components do not appear to have been an issue in the prior softwood lumber proceeding ("Lumber IV") or the 2006 Softwood Lumber Agreement between the Government of Canada and the Government of the United States ("SLA 2006"); bedframe components meeting certain specifications were excluded from both Lumber IV<sup>7</sup> and the SLA

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<sup>7</sup> See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada ("Lumber IV CVD Final Determination"), 67 Fed. Reg. 15,545, 15,546 (Apr. 2, 2002) (excluding from the scope certain "Box-spring frame kits" and "Radius-cut box-spring-frame components"); Memorandum from Bernard Carreau, Dep. Assistant Sec'y for Group II, Import Admin., to Faryar Shirzad, Assistant Sec'y for Import Admin., re: Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada ("Lumber IV AD I&D Memo") 6 n.6 (Mar. 21, 2002) (same) (excerpt included as **Attachment 1**).

2006.<sup>8</sup> Canada understands that the interested parties who are raising these issues are working with Petitioner towards mutually agreeable exclusion definitions.

The Department should clarify that **I-joists** are excluded from the scope of these investigations, as requested by Canfor Corporation. I-joists were expressly excluded from Lumber IV<sup>9</sup> and the SLA 2006.<sup>10</sup> It appears that I-joists were not intended to be within the scope of these investigations and that Petitioner is amenable to an express exclusion. **Wood shims** should also be excluded from the scope of these investigations, as articulated in the submission by J.D. Irving, Ltd.

**Edge-glued wood**, a product used for decorative, non-structural applications, should be excluded from the scope of these investigations, as requested by Terminal Forest Products. Edge-glued wood was expressly excluded from Lumber IV<sup>11</sup> and from the SLA 2006.<sup>12</sup> Canada understands that Petitioner may be willing to agree to exclude edge-glued wood from the scope of these investigations if the exclusion adequately describes the product and would not encompass dimensional lumber for structural applications.

For the reasons set forth in Attachment 4 to Canada's Consultations Paper, the Department should exclude lumber produced from **logs harvested from First Nations or private lands**. The Department should also exclude **high-value products**, as explained in Attachment 5 to Canada's Consultations Paper and in the comments submitted by the Government of British Columbia.

<sup>8</sup> See SLA 2006, Annex 1A para. 4(b), (c) (excluding from the scope certain "box-spring frame kits" and "radius-cut box-spring-frame components") (**Attachment 2**).

<sup>9</sup> Lumber IV CVD Final Determination, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>10</sup> SLA 2006, Annex 1A para. 3(b).

<sup>11</sup> Lumber IV CVD Final Determination, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>12</sup> SLA 2006, Annex 1A para. 3(f).

## II. The Department Should Remove the “May Also Be Classified” Description and Accompanying HTSUS Codes

Petitioner has recognized that “actual ‘finished products’ made from subject merchandise are outside the scope.”<sup>13</sup> The current scope definition includes “{c}omponents or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the {dimensional lumber products described} above.” Nonetheless, following the written description (including the statement regarding components) and list of 47 HTSUS codes for products intended to be within the scope of the investigations, the current scope definition adds two paragraphs that appear to serve no function other than to create confusion and necessitate numerous requests for express exclusions:

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.

The nine HTSUS subheadings listed refer to products that Petitioner does *not* claim to be within scope. Instead, these paragraphs have been included to address potential circumvention issues by identifying ways that products that do meet the scope definition could be misclassified as other, out-of-scope products. This is neither necessary nor helpful in these investigations.

The General Rules of Interpretation that govern the HTSUS make clear that an “incomplete or unfinished article” may be classified under a code for a finished product only if it “has the essential character of the complete or finished article.”<sup>14</sup> Products classified under the nine HTSUS codes referenced above are, by definition, either finished products or components

<sup>13</sup> Supplement to the Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Response to the Department’s Supplemental Questions (“Petitioner’s Response to Supplemental Questions”) at 3 (Dec. 1, 2016).

<sup>14</sup> General Rules of Interpretation 2(a), Harmonized Tariff Schedule of the United States (2017).

of such finished products that possess the essential character of the finished products. To the extent that the Department has concerns about U.S. Customs and Border Protection (“Customs” or “CBP”) officials making decisions on what products are in or out of scope, the two paragraphs at issue do nothing to address those concerns. In the event an antidumping or countervailing duty order is imposed, Customs officials will still be required to determine whether merchandise falls within the affirmative scope definition that precedes the two paragraphs. The two paragraphs do not alter the scope or the analysis that CBP must perform. They are thus, at best, superfluous.

At worst, the two unnecessary paragraphs set the stage for protracted and unnecessary scope litigation that the Department and all parties should prefer to avoid. Instead of providing clarity, the two additional paragraphs raise uncertainty about whether merchandise never intended to be within the scope of these investigations will nonetheless be treated as in-scope. The ambiguity spawned by these two paragraphs has prompted many of the numerous scope clarifications and exclusions described below. Given that the products Petitioner seeks to cover with these additional paragraphs are already included in the written description, these paragraphs do nothing but obscure the focus of the investigations. The Department and all parties would be better served by a scope definition that ends with the express written description of the scope and the HTSUS codes that are clearly within that scope, rather than tacking on additional references to out-of-scope HTSUS codes. The Department should remove the paragraph and the accompanying HTSUS codes from the scope description.

### **III. The Government of Canada Requests that Certain Products Be Excluded from the Scope of these Investigations**

In addition to the exclusion requests by other interested parties (as described in Part I above) and the removal of the two superfluous paragraphs from the current scope definition (as

explained in Part II above), the Government of Canada requests that the following clarifications and exclusions be added to the scope description.<sup>15</sup>

The following items are excluded from the scope of these investigations:

- **Pallets or pallet kits properly classified under HTSUS 4415.20.**
- **Notched stringers: continuous, longitudinal pallet component with two notches (cut-outs) to facilitate partial four-way entry by lift truck tines. Notches are approximately nine (9") in length, minimum 1.25" in depth, and spaced at a consistent inset from each end.**
- **Trusses or truss kits properly classified under HTSUS 4418.99.90.20.**
- **Edge-glued wood: finished, non-structural wood products produced by finger jointing and then gluing multiple small pieces of wood to form an appearance-grade panel that is not graded for structural use; properly classified under HTSUS 4421.99.94.00.**
- **Cross-laminated timber: a solid, straight, rectangular panel formed from kiln-dried beams of wood that have been pressed, finger jointed, and glued in perpendicular layers.**
- **Garage doors.**
- **Door frames and door frame components properly classified under HTSUS 4418.20.**
- **Window frames and window frame components properly classified under HTSUS 4418.10.**
- **Properly classified furniture.**
- **Pre-cut bridging: pieces of 1x3" ranging from 12-3/4" up to 17-3/4"; cut with an angle on each end to fit between floor joists.**
- **Articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, of the HTSUS (TIB).**
- **Fence pickets requiring no further processing and properly classified under HTSUS 4421.91.70, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the**

<sup>15</sup> The HTSUS codes included in the bolded language below correspond to the current codes, which became effective January 1, 2017.



shape of isosceles right angle triangles with sides measuring 3/4 of an inch or more.

- U.S.-origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of these investigations if the following conditions are met: (1) if the processing occurring in Canada is limited to kiln drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (“USCBP”) that the lumber is of U.S. origin.
- All softwood lumber products entered claiming non-subject status based on U.S. country of origin shall be treated as excluded from the scope of these investigations, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to USCBP’s satisfaction that the softwood lumber entered and documented as U.S.- origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.
- Softwood lumber products contained in single family home packages or kits, regardless of tariff classification, are excluded from the scope of these investigations if the importer certified to items (a), (b), (c), and (d) and requirement (e) is met:
  - a) the imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
  - b) the package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract; decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
  - c) prior to importation, the package or kit must be sold to a retailer in the United States of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
  - d) softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the USCBP import entry; and

- e) **for each entry into the United States, the following documentation must be retained by the importer and made available to USCBP upon request:**
- i. a copy of the appropriate home design plan, or blueprint matching the customs entry in the United States,**
  - ii. a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer,**
  - iii. a listing of inventory of all parts of the package or kit being entered into the United States that conforms to the home design package being imported, and**
  - iv. in the case of multiple shipments on the same contract, all items listed in (iii) which are included in the shipment at issue shall be identified as well.**

Canada explains the bases for these exclusions below.

#### **A. Pallets, Pallet Kits, and Notched Stringers**

The Government of Canada requests that the Department, consistent with the results in Lumber IV and the terms of the SLA 2006, clarify that pallets and pallet kits properly classified under HTSUS subheading 4415.20 are outside the scope of these investigations. Petitioner has referenced CBP as providing rulings “clarifying the difference between lumber {subject to the scope definition} and finished products {outside the scope},”<sup>16</sup> and CBP has explained that “{a} pallet is a load board consisting of two decks separated by bearers or a single deck supported by feet and designed essentially for handling by means of fork-lift trucks or pallet trucks.”<sup>17</sup> Completed pallets are clearly outside the scope of these investigations, as Petitioner has acknowledged.

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<sup>16</sup> See Petitioner’s Response to Supplemental Questions at 1 (“While not dispositive for the scope definition here, classification rulings by U.S. Customs and Border Protection (‘CBP’) clarifying when items are properly classified as softwood lumber in subchapter 4407 of the Harmonized Tariff Schedule (‘HTS’) and when properly classified as further processed items in other HTS subchapters can be instructive in clarifying the difference between lumber and finished products.”).

<sup>17</sup> NY J84619 (June 16, 2003).

Pallet kits and notched stringers, a component of pallets, should also be expressly excluded.

**1. Pallet kits properly classified under HTSUS subheading 4415.20 are outside the scope of these investigations**

Pallet kits consist of the components of a pallet that are “imported in a condition ready to be assembled together.”<sup>18</sup> There are a number of reasons for the Department to clarify that pallet kits that are properly classified under HTSUS subheading 4415.20 are outside the scope of these investigations.

As noted above, in the Lumber IV investigations, the Department from its preliminary determinations forward clarified that pallets and pallet kits properly classified under HTSUS 4415.20 were excluded from or outside the scope of the antidumping and countervailing duty investigations. For example, in its notice of the preliminary determination in the antidumping investigation, the Department listed a number of “{s}oftwood lumber products excluded from the scope,” including “Pallets and pallet kits, properly classified under HTSUS 4415.20.”<sup>19</sup> Similarly, in the notice of the amended final determination and antidumping duty order, the Department expressly stated that “as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order,” and among these Group A products were “Pallets and pallet kits, properly classified under HTSUS 4415.20.”<sup>20</sup> Indeed, the Department’s reference to these products “remain{ing} outside the scope of this order” indicates that these pallets and pallet kits were not even included within the language of the order.

<sup>18</sup> NY N012467 (July 5, 2007).

<sup>19</sup> *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 Fed. Reg. 56,062, 56,063 (Nov. 6, 2001).

<sup>20</sup> *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 Fed. Reg. 36,068, 36,069 (May 22, 2002).

Consistent with the results in Lumber IV, when the United States and Canadian governments negotiated the SLA 2006, which terminated the Lumber IV proceedings and was in effect through October 12, 2015, the parties included, among others, a clarification that pallets and pallet kits properly classified in HTSUS subheading 4415.20 were not subject to the terms of that agreement. Thus, the SLA 2006 defined the term “Softwood Lumber Products” subject to the agreement, providing that among the items “excluded from the scope of the SLA 2006” were “pallets and pallet kits, properly classified under HTSUS 4415.20.”<sup>21</sup> Accordingly, for the nine-year period that the SLA 2006 was in effect following the termination of the Lumber IV proceedings and consistent with the results in those proceedings, pallet kits as well as pallets properly classified under HTSUS subheading 4415.20 were not subject to the limitations applicable to “softwood lumber products.”

HTSUS subheading 4415.20 applies to “Pallets, box-pallets and other load boards; pallet collars.” This HTSUS subheading has no express provision for “parts,” so to be properly classified in HTSUS subheading 4415.20, pallet kits must satisfy the requirements of General Rules of Interpretation 2(a) of the Harmonized Tariff Schedule of the United States, which provides that a “reference in a heading to an article” shall include “a reference to that article . . . entered unassembled or disassembled.” Accordingly, “unassembled” or “disassembled” pallets may be classified in HTSUS subheading 4415.20 as “pallets.”

Further, CBP has been very exacting in ensuring that pallet kits claimed to be classifiable in HTSUS subheading 4415.20 meet the requirements of being “unassembled” or “disassembled” pallets. For example, in HQ 965460 (September 5, 2002) a company filed a protest claiming that CBP had incorrectly classified what it claimed were “unassembled pallets” in HTSUS subheadings 4407 or 4409, claiming that these products should instead have been

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<sup>21</sup> SLA 2006 Annex 1A para. 3(d).

classified in HTSUS subheading 4415.20.80. According to CBP, the protestant had stated that “five entries consisted of unassembled pallets containing six pieces: three top decks and three runners,” and that “{e}ach top deck and runner measure 1½” by 3½”, in lengths of 42”, 25¾” or 29½”, and 1½” by 5½” by 22½”.”<sup>22</sup> CBP held, however, that notwithstanding the specific measurements of these imports, they were not classified in HTSUS subheading 4415.20. CBP responded to the protestant’s citation to four rulings by stating that these “rulings actually support Customs {sic} position that the boards in question are not pallets or unassembled pallets,” explaining that “{u}nlike the boards in question, in all the rulings cited above the deckboards are thinner than the runners, and in no case do they exceed 1” in thickness.”<sup>23</sup> Accordingly, CBP concluded that “the boards referred to by the protestant as unassembled pallets, skids and platform kits, fall squarely within the terms of heading 4407, HTSUS,” adding that these products “are a collection of dimension lumber in nominal sizes of “2 x 4” and “2 x 6” and in various lengths” and that the “boards have no features that make them recognizable as pallets or unassembled pallet components.”<sup>24</sup>

By contrast, CBP has permitted classification of “pallet kits” only where they met the requirements for classification as “unassembled” pallets. For example, in NY N012467 (July 5, 2007), CBP dealt with the classification of “two pallet kits, consisting of unassembled 38” x 84” and 42” x 84” wood pallets,” with each pallet kit further described as consisting of three runners with a particular nominal and actual size, eight top deck boards with a particular nominal and actual size, and six bottom deck boards with a nominal and actual size. CBP concluded that these pallet kits were properly classified in HTSUS subheading 4415.20.8000 on the ground that

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<sup>22</sup> HQ 965460 at 2 (Sept. 5, 2002).

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 3-4; *see also* NY J84619 (June 16, 2003) (rejecting a claim for classification of products under HTSUS subheading 4415.20 on the ground that: “In the condition as imported, the {product} consists simply of pieces of sawn wood. The pieces will be used to make dishwasher bases; however, they are not recognizable as bases or any other articles at the time of importation.”).

“{t}he components are imported in a condition ready to be assembled together,” and that “{t}he exact number of the required components would be imported together in one shipment to make a specific number of pallets.”<sup>25</sup>

In short, CBP has construed HTSUS subheading 4415.20 to include pallet kits recognizable as such and has rejected such classification where it concluded from the circumstances that the claimed pallet kits were determined to instead involve “a collection of dimension lumber” without “features that make them recognizable as pallets or unassembled pallet components.”

Petitioner’s concern is of course that any possible exclusion from the scope might provide an opportunity for “circumvention” of a potential order. However, the results from the Lumber IV experience do not indicate any basis for this concern. Included in **Attachment 3** to this filing is a summary of imports under HTSUS subheading 4415.20 from Canada for each year from 1998 through 2006. Also included in **Attachment 3** is a listing comparing the average quantity imported from 1998 through 2000 (years prior to the Department’s Lumber IV investigations) to the average quantity imported from 2001 through 2006 (the years covered by the Department’s Lumber IV investigations).

As indicated in these attachments, the average quantity of imports from Canada in HTSUS subheading 4415.20 actually declined from the years 1998 through 2000 compared to the period from 2001 through 2006. This result is fully consistent with the conclusion that the fact that imports of pallets and pallet kits properly classified under HTSUS subheading 4415.20 were clarified as “remain{ing} outside the scope of” the antidumping and countervailing duty orders in Lumber IV did not result in any circumvention of the orders.

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<sup>25</sup> NY 012467 (July 5, 2007).

We understand that Petitioner may also be concerned about defining a scope exclusion principally by reference to classification under a particular HTSUS subheading, on the ground that this formulation could be interpreted to allow another agency, CBP, to determine whether certain products are outside the scope. This concern does not seem well founded in this case, particularly given the express requirements applied in the relevant CBP rulings. Indeed, when the Department was considering the exclusion for pallet kits in the Lumber IV proceedings, it expressly switched from an exclusion referencing specific language to language referencing the requirements of HTSUS subheading 4415.20.<sup>26</sup> To the extent the Department may require detailed specification of the characteristics of pallet kits, however, the Government of Canada and other interested parties are open to working with Petitioner to develop a mutually acceptable description.

**2. Notched stringers should be expressly excluded from the scope of these investigations**

Notched stringers are continuous, longitudinal pallet components that have two notches (cut-outs) of approximately nine inches in length spaced at a consistent inset from each end. The notches are at least one and a quarter inches in depth and placed to facilitate partial four-way entry by lift truck tines.

**Figure 1:  
Notched Stringer**



<sup>26</sup> See Memorandum from Maria MacKay, Senior Analyst, to Bernard Carreau, Dep. Assistant Sec'y for Import Admin., re: Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada 4-5 (Oct. 30, 2001) (**Attachment 4**).

Notched stringers may be shipped as part of a pallet kit, but merit their own independent exclusion because they have no other use than as part of a completed pallet. Notched stringers containing at least two notches on the side, positioned at equal distance from the center to properly accommodate forklift blades were previously excluded from both Lumber IV<sup>27</sup> and the SLA 2006.<sup>28</sup>

## **B. Trusses and Truss Kits**

The Department should clarify that completed or assembled trusses are not within the scope of these investigations. Canada understands that Petitioner did not intend to include completed trusses. Trusses are not lumber, and were previously excluded from both Lumber IV<sup>29</sup> and the SLA 2006.<sup>30</sup>

Truss kits were also excluded in Lumber IV<sup>31</sup> and the SLA 2006,<sup>32</sup> and should likewise be excluded here. Properly defined, truss kits are not within the scope of these investigations because: they feature physical characteristics, such as special markings or cuts, that render them unsuitable for use other than in assembling trusses; the ultimate purchasers of these components do not expect to use them interchangeably with dimensional or framing lumber; the kits are ultimately assembled for their intended applications; and the kits are not advertised or displayed as being interchangeable with dimensional or framing lumber.

## **C. Edge-Glued Wood**

As set forth in the comments submitted by Terminal Forest Products, edge-glued wood should be expressly excluded from the scope of the investigations, consistent with the treatment of this product in Lumber IV and the SLA. Edge-glued wood is an appearance-grade product

<sup>27</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546; Lumber IV AD I&D Memo, at 6.

<sup>28</sup> SLA 2006, Annex 1A para. 4(a).

<sup>29</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>30</sup> SLA 2006, Annex 1A para. 3(a).

<sup>31</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>32</sup> SLA 2006, Annex 1A para. 3(a).



manifesting significant value-added processing, not used or graded for structural applications, and not interchangeable with the dimensional softwood lumber at issue in these investigations.

#### D. Cross-Laminated Timber

The Department should clarify that cross-laminated timber (“CLT”) is not within the scope of these investigations. It does not appear that Petitioner intended for CLT to fall within the scope description, and this highly processed, value-added specialty product is entirely distinct from dimensional lumber under the *Diversified Products* criteria.

First, CLT differs from dimensional lumber in its physical characteristics. “A CLT panel consists of several layers of kiln-dried lumber boards stacked in alternating directions, bonded with structural adhesives, and pressed to form a solid, straight, rectangular panel. An odd number of layers (usually, three to seven,) and may be sanded or prefinished before shipping.”<sup>33</sup> The result is an advanced engineered wood product, as shown in Figure 2.

**Figure 2:  
Cross-Laminated Timber<sup>34</sup>**



Second, with respect to the expectations of purchasers and ultimate use of the product, finished CLT panels are exceptionally stiff, strong, and stable, handling load transfer on all sides

<sup>33</sup> <http://www.rethinkwood.com/tall-wood-mass-timber/products/cross-laminated-timber-clt>.

<sup>34</sup> *Id.*; Wallace, Rebecca, *Woodworking Network*, “Seismic Performance of Cross-Laminated Timber” (Sep. 4, 2014) (<http://www.woodworkingnetwork.com/production-woodworking/woodworking-machinery-technology/Seismic-Performance-of-Cross-Laminated-Timber-274008551.html>).

and therefore used in place of manufactured, non-wood materials. The International Building Code now permits CLT for load-bearing walls with two-hour fire resistance, in the place of traditional brick or other noncombustible materials.<sup>35</sup> For example, the entire interior structure (floors, ceilings, elevator shafts, and stairwells) of the Stadthaus, a nine-story building in London, was constructed with CLT instead of with steel or concrete.<sup>36</sup> High rises using CLT are under construction in Norway and Canada, with more in the planning stages.<sup>37</sup> CLT is promoted as “green” renewable resource that is fire and seismic resistant.<sup>38</sup> Experts have said that CLT panels have more in common with concrete than timber.<sup>39</sup> In addition, producers also tout the ability to tailor the product in the factory for easy installation on-site.<sup>40</sup> Traditional studs, boards, and dimensional lumber are not suitable for these advanced uses.

Third, the channel of trade for CLT differs from lumber. CLT panels are designed and manufactured to order and specification, often delivered with pre-cut window and door openings, for just-in-time installation on the building site.<sup>41</sup> In contrast, softwood lumber is generally sold to wholesalers, distributors, and pro-builder outlets for later sale and distribution to purchasers who further process the lumber as needed.<sup>42</sup>

CLT is a separate and distinct product from softwood lumber, and the Department should clarify the scope of these investigations to expressly exclude CLT.

<sup>35</sup> Havel, George, *Fire Engineering*, “Cross Laminated Timber Structures” (Jan. 1, 2016) (<http://www.fireengineering.com/articles/print/volume-169/issue-1/features/cross-laminated-timber-structures.html>).

<sup>36</sup> Risen, Clay, *Popular Science*, “The World’s Most Advanced Building Material Is . . . Wood: And It’s Going to Remake the Skyline” (Feb. 26, 2014).

<sup>37</sup> *Id.*

<sup>38</sup> See, e.g., Wallace, Rebecca, *Woodworking Network*, “Seismic Performance of Cross-Laminated Timber” (Sep. 4, 2014) (<http://www.woodworkingnetwork.com/production-woodworking/woodworking-machinery-technology/Seismic-Performance-of-Cross-Laminated-Timber-274008551.html>).

<sup>39</sup> Risen, Clay, *Popular Science*, “The World’s Most Advanced Building Material Is . . . Wood: And It’s Going to Remake the Skyline” (Feb. 26, 2014).

<sup>40</sup> Havel, George, *Fire Engineering*, “Cross Laminated Timber Structures” (Jan. 1, 2016) (<http://www.fireengineering.com/articles/print/volume-169/issue-1/features/cross-laminated-timber-structures.html>).

<sup>41</sup> *Id.*

<sup>42</sup> *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Final), USITC Pub. 3509 at II-1 (May 2002).

### **E. Garage Doors**

The Department should clarify that garage doors are expressly excluded from the scope. Petitioner appears to agree that garage doors were not intended to be included within the scope of these investigations. Garage doors are finished products, not lumber. They were excluded previously from both Lumber IV<sup>43</sup> and the SLA 2006,<sup>44</sup> and the Department should adopt the same exclusion in these investigations.

### **F. Door Frames and Window Frames**

The Department should expressly exclude finished door frames and finished window frames. Petitioner does not appear to have intended these finished or completed products to fall within the scope of the investigations. These products are not lumber and were excluded previously from Lumber IV<sup>45</sup> and the SLA 2006.<sup>46</sup> These frames, which are further processed and assembled to function only as openings, are physically and functionally different than typical lumber, often with decorative trim and finishes.<sup>47</sup> Due to their narrow dimensions and additional value added processing, purchasers would not use door and window frames for other construction uses. And, finally, such frames are marketed not just for their form and function as windows and doors but their aesthetic appeal.<sup>48</sup> As such, door and window frames are clearly outside the scope of these investigations.

The Department should also exclude door and window frame components. These components, properly defined, are not within the scope—which is focused on dimensional and framing lumber. The components feature physical characteristics, such as special markings or

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<sup>43</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>44</sup> SLA 2006, Annex 1A para. 3(e).

<sup>45</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>46</sup> SLA 2006, Annex 1A para. 3(g), (h).

<sup>47</sup> See, e.g., <https://www.loewen.com/product-portfolio/double-single-hung-windows/>; <https://www.loewen.com/product-portfolio/terrace-doors/>.

<sup>48</sup> See, e.g., *id.*

cuts, that render them suitable for use only in completed or finished products that are not dimensional or framing lumber; the ultimate purchasers of these components do not expect to use them interchangeably with dimensional or framing lumber; the components are ultimately used in their intended applications; they are not sold through the same channels of trade as dimensional or framing lumber; and the components are not advertised or displayed as being interchangeable with dimensional or framing lumber.

### **G. Furniture**

The Department should exclude properly classified furniture. Furniture was excluded from both Lumber IV<sup>49</sup> and the SLA 2006.<sup>50</sup> It is not lumber, and should be expressly excluded from the scope of these investigations.

### **H. Pre-Cut Bridging**

Pre-cut bridging, classified under HTSUS 4418.90.46.95,<sup>51</sup> should be excluded from the scope of these investigations. Pre-cut bridging is defined as pieces of wood that is one inch thick, three inches wide, ranges in length from twelve and three quarter inches to seventeen and three quarter inches, and is cut with an angle on each end to fit between floor joists. This product is manufactured and purchased for specialized use that distinguishes it from the dimensional lumber at issue in these investigations. Pre-cut bridging has not been included in previous lumber proceedings. The HTS code should be removed from the scope description, and the express exclusion proposed above should be adopted.

### **I. Articles Brought into the United States Temporarily**

The Department should also exclude articles brought into the United States temporarily

<sup>49</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546 n.1; Lumber IV AD I&D Memo, at 6 n.6.

<sup>50</sup> SLA 2006 Annex 1A para. 3(i).

<sup>51</sup> Subheading 4418.90 has been removed from the HTSUS since the Petition was filed. The Government of Canada believes that pre-cut bridging may fall under 4418.99 in the 2017 edition.

and claimed to be exempt from duty under Chapter 98, Subchapter XIII, of the HTSUS (TIB).<sup>52</sup>

These items were expressly excluded from the scope of the SLA 2006,<sup>53</sup> and, for clarity and predictability, the same exclusion should be added to scope of these investigations.

## **J. Fence Pickets**

The Department should exclude fence pickets from the scope of these investigations.

Completed fence pickets were excluded from the SLA 2006 if they met the following description:

Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70,<sup>54</sup> 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 of an inch or more

The same exclusion should be adopted in the current investigations. Fence pickets, as defined in the requested exclusion, differ in physical characteristic from dimensional lumber. Unlike dimensional lumber, fence pickets are thin and often are manufactured with decorative finishes designed to add to the aesthetic appeal of a home or other structure. Purchasers would not expect to use fence pickets for other construction applications. Fence pickets are thinner and typically shorter than dimensional lumber, which makes them unfit for structural use, which is the predominant application for dimensional softwood lumber.<sup>55</sup> Finally, fence pickets are marketed for their obvious use as functional and decorative border. If a retailer sells lumber and fence pickets, they are promoted in separate and distinct categories.<sup>56</sup> As such, we ask the Department

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<sup>52</sup> “TIB” means “temporary importation under bond.”

<sup>53</sup> SLA 2006 Annex 1A at para. 3(j).

<sup>54</sup> In the 2017 edition of the HTS, this code is 4421.91.70.

<sup>55</sup> For example, Home Depot sells fence pickets that are as thin as 5/8 inches, compared to 2-inch framing studs. See <http://www.homedepot.com/b/Lumber-Composites/N-5yc1vZbqpg>.

<sup>56</sup> See, e.g., *id.*

to expressly exclude this product. We understand that Petitioner may be willing to agree to this or a similarly worded exclusion for fence pickets.

### **K. U.S.-Origin Lumber**

Canada also requests that U.S.-origin lumber be excluded, as it was in both Lumber IV<sup>57</sup> and under the SLA 2006.<sup>58</sup> U.S.-origin lumber obviously does not include lumber produced in Canada, but instead involves value added to lumber produced in the United States. Therefore, regardless of the type and quantity of value-added processing undertaken in Canada, products made from U.S.-origin lumber would not benefit from any alleged stumpage subsidies. The requested language above is drawn from the SLA 2006 and should be adopted for purposes of these investigations.

### **L. Non-Subject Status Products**

Similarly, the Department should exclude all softwood lumber products entered claiming non-subject status based on U.S. country of origin. As with the preceding exclusion, these products do not include lumber produced in Canada, but instead involves value added to lumber produced in the United States. Products subject to this particular exclusion, therefore, do not implicate any of the programs alleged in the CVD. The requested language above is drawn from the SLA 2006 and should be adopted for purposes of these investigations.<sup>59</sup>

### **M. Single Family Home Packages or Kits**

The single family home package exclusion above, taken from the SLA 2006,<sup>60</sup> should be added to the description of the scope in these investigations. These products were also excluded from Lumber IV.<sup>61</sup>

<sup>57</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546; Lumber IV AD I&D Memo, at 6-7.

<sup>58</sup> SLA 2006 Annex 1A para. 4(e).

<sup>59</sup> *Id.* at para. 4(f).

<sup>60</sup> *Id.* at para. 5.

<sup>61</sup> *Lumber IV CVD Final Determination*, 67 Fed. Reg. at 15,546-47; Lumber IV AD I&D Memo, at 7-8.

\* \* \*

In sum, the Government of Canada urges the Department to give serious consideration to the aforementioned requests for exclusion. Granting such exclusions would significantly clarify the scope of these investigations and assist all parties moving forward.

Respectfully submitted,

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Counsel to the Government of Canada

## GOVERNMENT CERTIFICATION

I, Melissa Adler, Counsel to Foreign Affairs, Trade and Development Canada, currently employed by the Government of Canada, certify that I prepared or otherwise supervised the preparation of the attached submission of Comments on Scope filed on January 9, 2017 pursuant to the antidumping and countervailing duty investigations regarding Softwood Lumber from Canada (A-122-857/C-122-858). I certify that the public information and any business proprietary information of the government of Canada 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 Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

**Signature:**



**Date:**

Jan 9, 2017



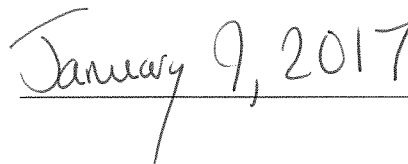
### COUNSEL CERTIFICATION

I, Eric S. Parnes, with Hughes Hubbard & Reed LLP, counsel to the Government of Canada, certify that I have read the attached submission of Comments on Scope filed on January 9, 2017 pursuant to the antidumping and countervailing duty investigations regarding Softwood Lumber from Canada (A-122-857/C-122-858). In my capacity as counsel to the Government of Canada 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 U.S. Department of Commerce 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:**



# Attachment 1



39

A-122-838

Investigation  
Public Document  
G205

**Public file**

MEMORANDUM TO: Faryar Shirzad  
Assistant Secretary  
for Import Administration

FROM: Bernard T. Carreau **BT**  
Deputy Assistant Secretary  
for Group II, Import Administration

DATE: March 21, 2002

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Investigation of Certain Softwood Lumber Products From Canada

**Summary**

This memorandum addresses issues briefed or otherwise commented upon in the above-referenced proceeding. Section I addresses the general issues briefed by interested parties. Section II addresses the company-specific issues briefed by interested parties. Section III addresses the scope issues briefed by the interested parties.



**I. General Issues**

- Comment 1: Whether the Department should rescind the initiation and terminate the investigation
- Comment 2: Whether dumping exists
- Comment 3: Critical circumstances
- Comment 4: Value-based cost allocation methodology
- Comment 5: Fair comparisons in the application of the sales below cost test
- Comment 6: Constructed value profit
- Comment 7: Product matching
- Comment 8: Value-based difference in merchandise (difmer) adjustments
- Comment 9: Whether Softwood Lumber Agreement (SLA) export taxes should be deducted from U.S. price
- Comment 10: Treatment of trim ends/trim blocks
- Comment 11: By-product revenue offset
- Comment 12: Treatment of negative margins
- Comment 13: Exclusion of Maritime Provinces

**II. Company-Specific Issues**

**Issues Specific to Abitibi**

- Comment 14: Whether Scierie Saguenay Ltée. should be collapsed into the Abitibi Group
- Comment 15: Financial expense ratio
- Comment 16: General and administrative (G&A) expense ratio

**Issues Specific to Canfor**

- Comment 17: Canfor, Lakeland, and The Pas' product reporting
- Comment 18: Treatment of three U.S. sales
- Comment 19: G&A expenses for Canfor, Lakeland, and The Pas
- Comment 20: Canfor's packing cost

**Issues Specific to Slocan**

- Comment 21: Futures contracts
- Comment 22: Unreported freight expenses
- Comment 23: Unreported comparison market freight rebates
- Comment 24: Overstated freight rebates
- Comment 25: Donations
- Comment 26: Cost differences for precision end trimmed products
- Comment 27: Mackenzie Ospika Division Lathe and Precut
- Comment 28: Profits on log sales
- Comment 29: Depreciation expenses at the Plateau Sawmill
- Comment 30: Unreported foreign exchange losses

-3-

Comment 31: Timber tenure amortization

Comment 32: Startup adjustments

Issues Specific to Tembec

Comment 33: G&A expense

Issues Specific to West Fraser

Comment 34: Downstream sales

Comment 35: Inventory carrying costs

Comment 36: Log sales

Comment 37: Prior period stumpage and silviculture

Issues Specific to Weyerhaeuser

Comment 38: Sales verification

Comment 39: The petitioners received inadequate time to examine the Weyerhaeuser sales verification report

Comment 40: Warehousing expenses for WBM inventory sales

Comment 41: British Columbia Coastal's (BCC) warehousing expenses

Comment 42: Early payment discounts

Comment 43: CLB's SLA tax amounts

Comment 44: CLB's quota-transfer sales

Comment 45: Critical circumstances data for Monterra Lumber

Comment 46: Log/wood costs

Comment 47: Depletion expenses

Comment 48: G&A expenses

Comment 49: Interest expense

**III. Scope Issues**

Comment 50: Due process

Comment 51: Authority to define the scope

Comment 52: Class or kind of products

Comment 53: Other scope issues

Comment 54: Industry support

Comment 55: Whether including certain products is harmful to U.S. industry

Comment 56: Remanufactured products

Comment 57: Scope exclusion requests

## **Background**

On October 30, 2001, the Department of Commerce (the Department) issued the preliminary determination of the antidumping duty investigation of certain softwood lumber products from Canada.<sup>1</sup> After analyzing allegations of ministerial errors in the preliminary determination by two of the six mandatory respondents,<sup>2</sup> we agreed that certain allegations constituted ministerial errors, but that they did not amount to “significant ministerial errors” within the meaning of the Department’s regulations. As such, we did not issue an amended preliminary determination.<sup>3</sup> The corrections are reflected in the final margin calculations. The period of investigation (POI) is April 1, 2000, through March 31, 2001. The respondents in this case are: Abitibi-Consolidated Inc. (Abitibi), Canfor Corporation (Canfor), Slocan Forest Products Ltd. (Slocan), Tembec Inc. (Tembec), West Fraser Timber Co. Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser). We verified the information submitted on the record by the respondents, and issued the verification reports in January and February 2002. On February 12 and 19, 2002, we received case briefs and/or rebuttal briefs, respectively, from the petitioners,<sup>4</sup> the respondents, and other interested parties.<sup>5</sup> The petitioners and the respondents requested a public hearing, which was held on February 25, 2002.

On March 12, 2002, we issued a memorandum detailing our preliminary findings with respect to class or kind and certain scope exclusion issues. Case briefs and rebuttal briefs were filed by a number of interested parties. A public hearing was held on these issues on March 19, 2002.

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<sup>1</sup> See *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 FR 56062 (November 6, 2001) (Preliminary Determination).

<sup>2</sup> The two respondents who filed allegations of ministerial errors in the preliminary determination are Canfor Corporation and Slocan Forest Products Ltd. See letters from Kaye Scholer, LLP and Baker and McKenzie, respectively, to the Department (November 13, 2001).

<sup>3</sup> See Ministerial Error Allegations Memorandum from Christopher Smith and Taija Slaughter, Case Analysts, to Bernard Carreau, Deputy Assistant Secretary, Group 2 (January 11, 2002).

<sup>4</sup> The petitioners are the coalition for Fair Lumber Imports Executive Committee; the United Brotherhood of Carpenters and Joiners; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union.

<sup>5</sup> In addition, case briefs were received from the American Consumers for Affordable Housing (ACAH), “an alliance of 17 organizations, representing the sectors that account for over 95% of American consumption of softwood lumber,” an interested party as defined by section 777(h) of the Act; the Idaho Timber Corporation; and the provinces of New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, the Maritime Lumber Bureau, and lumber producers located in those provinces (the Maritimes). Case and rebuttal briefs were received from the British Columbia Trade Council (BCLTC) and its Constituent Associations, the Cariboo Lumber Manufacturers’ Association, the Coast Forest & Lumber Association, the Interior Lumber Manufacturers’ Association, and the Northern Forest Products Association; and the Ontario Forest Industries Association and Ontario Lumber Manufacturers Association (OFIA/OLMA).



**Scope of the Investigations**

The products covered by these investigations are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

- (1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;
- (2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;
- (3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and
- (4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate federal register notices.

**Final Scope Exclusions**

On February 11, 2002, we published an amendment to the preliminary antidumping determination which modified the list of products excluded from the scope of the AD and CVD softwood lumber investigations. See *Notice of Amendment to Preliminary Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada; Amendment to Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Determination: Certain Softwood Lumber Products from Canada*, 67 FR 6230, 6231 (February 11, 2002) (Amended Preliminary). In our review of the comments received throughout the course of these proceedings, we found that the definitions for some of

the excluded products required further clarification and/or elaboration. Based on our analysis of the comments received, we have modified the list of excluded products as follows:<sup>6</sup>

*Softwood lumber products excluded from the scope only if they meet certain requirements:*

1. Stringers (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.
2. Box-spring frame kits: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
3. Radius-cut box-spring-frame components, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
4. Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
5. U.S. origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of the investigations if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create

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<sup>6</sup> A group of products that were excluded from the scope as classified was listed in the preliminary determinations as Group A. This list remains applicable as we determined, through our review of the petition and factual information submitted, and consultations with the parties, that the products were outside the scope of the investigations.

Group A. *Softwood lumber products excluded from the scope:*

1. Trusses and truss kits, properly classified under HTSUS 4418.90
2. I-Joist beams
3. Assembled box spring frames
4. Pallets and pallet kits, properly classified under HTSUS 4415.20
5. Garage doors
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40
7. Properly classified complete door frames.
8. Properly classified complete window frames
9. Properly classified furniture



-7-

smooth-to-size board, and sanding, and 2) if the importer establishes to Customs' satisfaction that the lumber is of U. S. origin.

6. Softwood lumber products contained in single family home packages or kits, regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:
  1. the imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
  2. the package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
  3. prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
  4. the whole package must be imported under a single consolidated entry when permitted by the U.S. Customs Service, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;
  5. the following documentation must be included with the entry documents:
    1. a copy of the appropriate home design, plan, or blueprint matching the entry;
    2. a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
    3. a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
    4. in the case of multiple shipments on the same contract, all items listed in 5(c) which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of these investigations provided the specified conditions are met. See Section C (Scope Issues) and Section D (Scope Exclusion Analysis) of this decision memorandum for further discussion.

Lumber products that Customs may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of these investigations and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. On January 24, 2002, Customs informed the Department of certain changes in the 2002 HTSUS affecting these products. Specifically, subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively. Therefore, we are adding these subheadings as well.

## **DISCUSSION OF ISSUES**

### **I. General Issues**

#### **Comment 1: Whether the Department should rescind the initiation and terminate the investigation**

Abitibi, Tembec, the Government of Canada, the British Columbia Lumber Trade Council (BCLTC) and its Constituent Associations (the Cariboo Lumber Manufacturers' Association, the Coast Forest & Lumber Association, the Interior Lumber Manufacturers' Association, and the Northern Forest Products Association), and the Ontario Forest Industries Association and Ontario Lumber Manufacturers Association (OFIA/OLMA) note that, despite ample time to do so, the Department failed to respond to the July 19, 2001, submission of the Government of Canada and other Canadian parties (referred to as "Joint Submission" within this comment) regarding deficiencies in the petition. Had the Department adequately examined the petition and the Joint Submission, these parties contend that an investigation would not have been initiated.<sup>7</sup>

As argued in the Joint Submission, the parties claim that the petition did not meet the standards described in section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), specifically because the petitioners did not provide company-specific information. According to the parties, this information was reasonably available to the petitioners because International Paper Inc., one of the members of the Coalition for Fair Lumber Imports Executive Committee, wholly owns the seventh largest Canadian producer. Accordingly, these parties assert that the petitioners could have based the alleged margins on company-specific information, but did not do so because such information would have undermined the contention of dumping.

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<sup>7</sup> Weyerhaeuser also argues that the Department should not be conducting an investigation, but for different reasons. According to Weyerhaeuser, there are "legitimate issues that need to be addressed due to the differences in the structure and practices in the two countries," but the antidumping law is not the way to address the issues (Weyerhaeuser case brief at 1). Instead, Weyerhaeuser contends that the parties and governments should reach an agreement regarding the "appropriate conditions of competition that should govern trade in these products" (*Id.* at 2). Weyerhaeuser argues that the use of the antidumping law in this situation will lead to a mismanagement of resources, not achieve a level playing field, penalize consumers, and distort the U.S. market.

we agree with Weyerhaeuser that the Department should not include any further adjustments for foreign exchange gains and losses, since during the fiscal year used to calculate the financial expense ratio (*i.e.*, 2000), Weyerhaeuser had no foreign denominated borrowings.

### III. Scope Issues

The scope and class or kind issues discussed below concern both the antidumping and the countervailing duty investigations.

During the course of these investigations, the Department received numerous scope-related requests. These requests could generally be classified into one of two categories: (1) scope exclusion requests, and (2) scope exclusion requests premised upon the theory that the various products constitute separate classes or kinds of merchandise when analyzed under the *Diversified Products*<sup>379</sup> criteria, and as such, are outside the scope of the petition. In these instances, it is further argued that the products should be excluded from the investigations because either the petitions lack adequate description of these products, or the petitions lacks the necessary elements to sustain an investigation on these products.<sup>380</sup>

We consider there to be one class or kind of merchandise within the scope of these investigations. Further, as stated in our preliminary determination regarding the class or kind requests,<sup>381</sup> and contrary to the assumptions behind the requests, a finding of multiple classes or kinds does not automatically lead to the exclusion of a given product from the scope of an investigation. Rather, if the Department finds that the petition encompasses multiple classes or kinds of merchandise, the Department must determine whether dumping or subsidization is occurring with respect to each distinct class or kind of merchandise. If the Department finds only one class or kind of merchandise, then it will calculate a single dumping margin or subsidy rate with respect to that class.<sup>382</sup>

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<sup>379</sup> The Department bases its determination of whether the merchandise, as described in the petition, constitutes a single class or kind of merchandise on an evaluation of the criteria set forth in *Diversified Products Corp. v. United States (Diversified Products)*, which look to differences in the: (1) general physical characteristics of the merchandise, (2) the expectations of the ultimate purchaser, (3) ultimate uses of the merchandise, (4) channels of trade in which the merchandise moves, and (5) manner in which the product is advertised or displayed. 572 F. Supp. 883, 889 (CIT 1983) (codified in the Department's Regulations at 19 CFR 351.225 (2001)).

<sup>380</sup> See Memorandum to Bernard T. Carreau, Deputy Assistant Secretary, Group II, *Class or Kind Determinations and Consideration of Certain Scope Exclusion Requests*, March 12, 2002 (*March 12 Scope Memo*) at 2. See *e.g.*, case brief regarding scope and class or kind issues from Abitibi (March 15, 2002) (Abitibi's scopebrief) at 8, case brief regarding scope and class or kind issues from Tembec (March 15, 2002) (Tembec's scope brief) at 1-2 (noting that Tembec incorporated by reference its earlier submissions on scope issues), case brief regarding scope and class or kind issues from Weyerhaeuser (March 15, 2002) (Weyerhaeuser's scope brief) at 8. The Department notes that other parties submitted briefs on this issues which contained similar arguments.

<sup>381</sup> See *March 12 Scope Memo* at 2-4.

<sup>382</sup> See *Id.* at 3.



When the Department receives a petition that meets the requirements of the statute, it must initiate an investigation<sup>383</sup> and, if warranted by the evidence, provide the relief requested.<sup>384</sup> The starting place for determining the merchandise that is to be the subject of an investigation is the petition itself.<sup>385</sup> The Department does, however, have the authority to define or clarify the scope of an investigation<sup>386</sup> and must exercise this authority “in a manner which reflects the intent of the petition”<sup>387</sup> and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. As a result, absent an “overarching reason to modify” the scope in the petition, the Department accepts it.<sup>388</sup>

There are circumstances under which the Department has invoked its authority to depart from the manner in which the petition treats the merchandise subject to the investigation. For example, what is described in the petition as a single class or kind of merchandise may, in fact, encompass multiple classes or kinds of merchandise. In such cases, the Department defines the separate classes or kinds covered by the petition,<sup>389</sup> then conducts a separate investigation of each and, if the decisions are affirmative, issues separate determinations for each class or kind of merchandise.

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<sup>383</sup> Sections 702(c)(2) and 732(a)(1) of the Act.

<sup>384</sup> Section 731(1) of the Act. The relief sought would apply to all subject merchandise that is within the scope of the investigations. See Section 731(2) of the Act.

<sup>385</sup> See 19 CFR 351.225(k)(1) (2001). See also *Eckstrom Industries, Inc. v. United States*, 254 F.3d 1068, 1071-72 (Fed. Cir. 2001) (citing *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990)).

<sup>386</sup> See generally *Final Determination of Sales at Less Than Fair Value: Certain Carbon Alloy Steel Wire Rod from Japan*, Comment 1, 59 FR 5987, 988-989 (Feb. 9, 1994).

<sup>387</sup> *Minebea Co. v. U.S.*, 782 F. Supp. 117, 120 (CIT 1992); see also *Sundstrand Corporation v. U.S.*, 890 F. Supp. 1100 (CIT 1995) (“The determination as to whether a product is covered by an antidumping duty investigation is one which the ITA must make with ample deference to the intent of the petition.”); *Mitsubishi Electric Corp. v. U.S.*, 700 F. Supp. 538, 555 (CIT 1988) *aff’d*, 898 F.2d 1577, 1583 (Fed. Cir. 1990) (“The ITA has the authority to define and/or clarify what constitutes the subject merchandise to be investigated as set forth in the petition containing the intent of petitioner expressed in as specific and definite terms, descriptions, and language as reasonably expected of petitioner. . . .”)

<sup>388</sup> See *Notice of Initiation of Antidumping Duty Investigations: Spring Table Grapes From Chile and Mexico*, 66 FR 26831, 26833 (2001). See also 19 C.F.R. § 351.225(k) (2001).

<sup>389</sup> See *Torrington Co. v. U.S.*, 745 F. Supp. 718 (CIT 1990) (The Department’s determination to segregate the merchandise, *i.e.*, antifriction bearings, into five classes or kinds was supported by substantial evidence); see also, *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Recission of Investigation and Partial Dismissal of Petition*, 56 FR 32376 (July 1991) (Department determined that the petitioner’s characterization of all high information content flat panel displays as a single class or kind was overly broad and, thus, the Department segregated the flat panel displays into four separate classes or kinds based on the type of technology).

The Department has also invoked its authority to define the scope of an investigation when the class or kind of merchandise, as defined by the petitioner, was not administrable. For example, in some cases, petitioners will include parts and components in the class or kind of merchandise, usually to avoid circumvention. In past cases, the Department amended the scope of an investigation to exclude all parts and components, except the primary component, because the others were so widely used that the scope would capture parts and components used for non-subject merchandise, which was not the petitioners' intent.<sup>390</sup>

In the instant softwood lumber investigations, as detailed in the *March 12 Scope Memo*, the Department received numerous requests for scope exclusions and exclusion requests based on separate class or kind treatment. The Department has responded to a number of these requests in earlier preliminary determinations.<sup>391</sup> The Department received more than 200 scope related requests. These requests covered various types of products including: (1) general lumber products (e.g., industrial grade lumber, dimension lumber less than three feet in length, timbers, boards, etc.); (2) carpentry construction products (e.g., door frame and sill parts, door jacks, fascia and trim boards, flooring and siding, etc.); (3) components and parts of finished products (e.g., furniture parts, refrigerator stock, trellis stock, vegetable box components, etc.); and (4) species specific (e.g., Western red cedar, Eastern white cedar, Eastern white pine, yellow cedar, etc.). The Department received all the information about these products and addressed many of these requests before issuing its March 12, 2002, decision on scope and class or kind treatment. In the March 12, 2002, scope memo, the Department conducted a class or kind analysis with respect to those products that it determined may demonstrate clear dividing lines and for which the parties provided ample information. Thus, we analyzed Western red cedar, Eastern white cedar, Eastern white pine, shop and better grade lumber, finger-jointed flange stock, pallet stock,

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<sup>390</sup> *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38140 (July 1996); *Notice of Preliminary Results of Antidumping Duty Administrative Review: Cellular Mobile Telephones and Subassemblies from Japan*, 53 FR 19318 (May 1988).

<sup>391</sup> See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada (CVD Prelim)*, 66 FR 43186-43188 (August 17, 2001); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada (AD Prelim)*, 66 FR 56062, 56078 (November 6, 2001); and *Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada; Amendment to Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada (Amended Prelim)*, 67 FR 6230 (February 11, 2002). See also *Memorandum to Bernard T. Carreau from Maria MacKay, on Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada: Amendment to the Language of the Scope Description* (January 18, 2002); *Memorandum to Bernard T. Carreau from Maria MacKay, Gayle Longest, David Layton on Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada* (October 30, 2001); *Memorandum to Bernard T. Carreau from Maria MacKay on Scope Exclusions in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada* (August 9, 2001) which are on public file in the CRU, room B-099 of the main Commerce building.

bed frame components and log cabin siding, and a few other products. We were not persuaded to accept the various arguments in favor of separate classes or kinds of merchandise. After considering all of the information on the record, we found that all of these products were within the scope and,<sup>392</sup> thus, we have continued to treat softwood lumber products as a single class or kind of merchandise.<sup>393</sup>

Moreover, with respect to scope exclusion requests, we reviewed the description of each product provided by the parties and compared the descriptions to the scope established at initiation, which was subsequently amended and clarified in our preliminary determinations. Based on this comparison, we determined whether a particular product was covered by the scope of these investigations.<sup>394</sup> In some instances we found products were within the scope and in others we found products to be outside of the scope. For example, we determined that Western red cedar (WRC), as classified under headings 4407.10.68 and 4407.10.69 of the Harmonized Tariff Schedule of the United States (HTSUS), is part of the scope as defined in the petition and our initiation notices, and as amended in the preliminary determinations, because the petition specifically described the products contained in these HTSUS headings.<sup>395</sup> Conversely, by looking at "bed frame kits," we determined that when certain circumstances were met, these products were outside of the scope of these investigations.<sup>396</sup>

#### **Comment 50: Due process**

Among others, the Weyerhaeuser Company (Weyerhaeuser) and U.S. Red Cedar Manufacturers Association (USRCMA) (collectively, the requesters), two parties requesting separate class or kind treatment and scope exclusion for Western red cedar, argue that the Department's issuance of its preliminary decisions on class or kind so late in the investigations violates statutory and

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<sup>392</sup> For example, Weyerhaeuser submitted arguments that Western red cedar constitutes a separate class or kind of merchandise and should be excluded from the investigations. See joint case brief from Weyerhaeuser and USRCMA (March 15, 2002) (Weyerhaeuser and USRCMA joint scope brief) at 18. As discussed in the *March 12 Scope Memo* where we presented our preliminary class or kind findings, the WRC arguments are illustrative of the different individual arguments proffered by the parties based upon the *Diversified Products* criteria. Other products argued on this basis were, Eastern white cedar, Eastern white pine, shop and better grade lumber, Southern yellow pine, and yellow cedar. This list is not exhaustive.

<sup>393</sup> See *March 12 Scope Memo*.

<sup>394</sup> See *Id.*, Appendices I and II. An example of how we analyzed scope exclusion request is illustrated by looking at WRC.

<sup>395</sup> See *Notice of Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products from Canada*, 66 FR 21328, 329 (Apr. 30, 2001).

<sup>396</sup> See Memorandum to Bernard T. Carreau from Maria MacKay, Gayle Longest, David Layton, *Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada* (October 30, 2001).



regulatory procedural requirements and deprives the requesters of their right to due process.<sup>397</sup> They assert that the Department's *March 12 Scope Memo* violates the statutory requirement that a preliminary determination be issued within 190 days of initiation.<sup>398</sup> The requesters protest that the three days allowed to respond to the Department's preliminary decision did not permit parties sufficient time for a meaningful analysis of the Department's decision.

The requesters contend that Article 6.2 of the WTO Agreement on Implementation of Article VI of GATT 1994 provides that in an antidumping investigation the "parties shall have a full opportunity for the defense of their interests." They note that Article 6.9 elaborates that the "authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision" and, according to the requesters, to issue a preliminary determination.<sup>399</sup>

The requesters maintain that the Department has acted in an arbitrary and capricious manner in failing to provide more time for parties' review of its class or kind decision.<sup>400</sup> The requesters assert that, in violating statutory and regulatory requirements concerning the timing of preliminary determinations, the Department has deprived parties of their due process rights under the Fifth Amendment of the Constitution. They cite a Federal Circuit decision which stated that an importer is entitled to due process whenever it faces a deprivation of property by the Federal Government.<sup>401</sup> The requesters argue that the Department's actions preclude due process in two ways. First, they contend that the compressed briefing schedule did not provide sufficient time for the requesters to address the Department's lengthy decision. Second, given the short time remaining before the final, they argue that the Department will not have time to consider the requesters arguments adequately.

The petitioners respond to these assertions with four arguments. First, they contend that, while the timetable was somewhat compressed, the parties had adequate time to brief these issues and have done so for almost 11 months.<sup>402</sup> Second, they cite to their filings and respondents' and other parties' submissions to demonstrate the depth and adequacy of the submissions and

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<sup>397</sup> The Department acknowledges that Abitibi, Tembec, the Governments of Canada and Quebec, the Ontario Lumber Association and others raised similar concerns with respect to process and the adequacy of the proceedings.

<sup>398</sup> See 19 U.S.C. 1673b(c)(1) (section 731(c)(1) of the Act). See also 19 C.F.R. § 351.205(b)(2).

<sup>399</sup> See Weyerhaeuser's and USRCMA's joint brief at 3-4.

<sup>400</sup> See Weyerhaeuser's and USRCMA's joint brief at 1.

<sup>401</sup> *NEC Corp. v. United States*, 151 F.3d 1361, 1370 (Fed Cir. 1998).

<sup>402</sup> See rebuttal brief on scope and class or kind issues from the petitioners (March 18, 2002) (petitioners rebuttal scope brief) at 2.

-144-

information on the record pertaining to scope issues.<sup>403</sup> Third, they note that the Department considered scope issues and the information presented for several months, as illustrated by the number of submissions by and meetings with the parties.<sup>404</sup> Fourth, they infer that all of the evidence needed for the Department's decision was previously submitted well in advance of the briefing and hearing schedule, because there was no new information presented in the briefs or at the hearing.<sup>405</sup> Therefore, the petitioners conclude that all parties were given ample process.

Department's Position: We agree with the parties that these investigations are among the most complex ever presented. The issues pertaining to scope in these cases were burdensome in that the Department received scope-related requests covering more than 50 products, ranging from species-specific requests to engineered wood products, all of which required our attention throughout the investigations.<sup>406</sup> We dealt with scope issues throughout the investigations and during this process, the Department considered information submitted by the parties and sought advice from other experts such as U.S. Customs Import Specialists.<sup>407</sup> And, while we agree with the requesters that the scope issues in these investigations were unusually complex, we disagree that we were unable to consider all submitted information. We evaluated and considered all submitted information on these issues in a manner that allowed us to comply with our statutory obligations.<sup>408</sup> Thus, we agree with the petitioners that all parties were afforded due process and ample time to respond to issues pertaining to scope.

The Department satisfied its statutory obligations with respect to sections 774 and 782(g) of the Act. Section 774 of the Act provides that, in an investigation, the Department "... shall ... hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination. . . ."<sup>409</sup> Section 774 further states that "... any hearing

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<sup>403</sup> See *Id.* at 2-3.

<sup>404</sup> See *Id.* at 2.

<sup>405</sup> See *Id.* at 2. The Department notes that the record for new factual information related to scope closed on January 7, 2002.

<sup>406</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 FR 56062, 56063 (Nov. 6, 2001).

<sup>407</sup> See *Amendment to Preliminary Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada; Amendment to Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Determination: Certain Softwood Lumber Products from Canada*, 67 FR 6230, 6231 (Feb 11, 2002), *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 FR 56062, 56063 (Nov. 6, 2001).

<sup>408</sup> Unfortunately, due to statutory deadlines, the Department could not grant the requests of some parties to extend the briefing and hearing period.

<sup>409</sup> See section 774 (a)(1) of the Act.



required or permitted under this title shall be conducted after notice published in the Federal Register. . . .”<sup>410</sup> Section 782(g) provides that the Department, before making a final determination, “. . . shall cease collecting information and . . . provide the parties with a final opportunity to comment on the information obtained by the {Department} upon which the parties have not previously had an opportunity to comment.”<sup>411</sup>

The Department provided notice of the scope hearing in two ways: First, when it published its *Federal Register* notice of Preliminary Determination; and second, when it distributed the verification reports with a cover letter alerting parties to the separation of scope issues from general issues.<sup>412</sup> Although the published *Federal Register* notices of the Preliminary Determinations did not specifically mention the scope hearing, the notices did alert parties that there would be a hearing, if requested, on issues in the investigations.<sup>413</sup> Further, the antidumping notice stated that, upon receipt of a valid request for a hearing, the Department would provide notice to the parties and that the general briefing schedule would be in direct correlation to the issuance of verification reports.<sup>414</sup> This series of events alerted parties to the fact that a hearing, if requested, would be forthcoming.

The Department, in a January 2, 2002, letter indicated that the record would be closed and no new factual information would be accepted with respect to scope and class or kind issues, hence all parties who submitted new factual information on these issues, did so no later than 70 days prior to the hearing.<sup>415</sup> When the Department distributed its antidumping verification reports on January 30, 2002, as it stated in the preliminary determination, it notified parties of the hearing and briefing schedule, and also stated that scope issues would be handled separately.<sup>416</sup> The effect of the January 30, 2002, letter was to put parties on notice that the scope hearing would be

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<sup>410</sup> See Section 774 (b) of the Act. See also 19 C.F.R. § 351.301(The Department recognizes that the regulations state that a hearing will ‘ordinarily . . . be held two days after scheduled date for submission of rebuttal briefs’ (19 C.F.R. § 351.310(d)(1)), but in the present investigations because the deadline for submitting factual information had passed and the fact that parties extensively briefed the scope issues, the Department deviated from its ordinarily followed procedure).

<sup>411</sup> See Section 782(g) of the Act.

<sup>412</sup> See January 30, 2002 Letter from IA Office Director to Interested Parties on antidumping briefing schedule.

<sup>413</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 FR 56062, 56078 (Nov. 6, 2001).

<sup>414</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada*, 66 FR 56062, 56078 (Nov. 6, 2001).

<sup>415</sup> See *factual information deadline letter*.

<sup>416</sup> See January 30, 2002 Letter from IA Office Director to Interested Parties on antidumping briefing schedule.

after the hearing on the preliminary determination and before the final. Based on the prior closure of the record, there was a definitive period during which the parties would have an opportunity to comment fully on the information presented and participate meaningfully prior to the Department's issuance of its final determination. After the AD and CVD hearings on general issues, the Department issued its preliminary class or kind determination in the *March 12 Scope Memo* with a letter containing the briefing and hearing schedule for the scope portion of the investigation, and the Department adhered to this schedule. Therefore, by holding a hearing, providing notice to the parties, and closing the record before the final determination and allowing parties to comment meaningfully, the Department complied with its statutory obligations.

Further, prior to issuing its final determinations, the Department thoroughly considered and addressed all comments and information provided by the parties with respect to these and other issues.<sup>417</sup> The Department's preliminary scope decision is based on the record, including facts and arguments submitted by all parties. Although the Department did not provide a *Diversified Products* analysis for each of the requests filed, because to do so would be too administratively burdensome, the Department did consider all arguments and in its analysis indicated that much of its analysis would be applicable to other products.<sup>418</sup> In many instances, as discussed in the *March 12 Scope Memo*, the arguments and rationale for addressing scope related comments for one product were the same for dealing with others.<sup>419</sup> Moreover, contrary to assertions by Weyerhaeuser, USRCMA, and others, we have not violated either the statute or our regulations by issuing our preliminary decisions on scope issues, including a determination of class or kind, close to the date of the final determination. In the present cases, the Department gave parties adequate notice, ample briefing period, and an opportunity to participate meaningfully in the hearing.<sup>420</sup>

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<sup>417</sup> See generally *March 12 Scope Memo*.

<sup>418</sup> See *Id.*

<sup>419</sup> For several products, the requesters were seeking separate class or kind treatment on the basis of marketing channels and price. See *Id.* at 33.

<sup>420</sup> See, *Kerr-McGee Chemical Corp. v. United States*, 985 F. Supp. 1166, 1179-181, *aff'd without opinion*, 185 F.3d 884 (Fed. Cir. 1999) (finding that changing the source of the surrogate value for determining normal value between the preliminary and final determinations did not violate procedural process), *Taiyuan Heavy Machinery Import and Export Corp. v. United States*, Slip Op. 99-103, 1999 Ct. Int'l. Trade Lexis 138 at 8 (CIT Oct. 6, 1999) (finding that irregularities in the Department's enforcement of its regulations does not violate and procedural benefits afforded, unless a party can demonstrate that it was substantially prejudiced by the Department's actions), *Comment 1- Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001) (finding that the Department did not violate 'due process' when it failed to disclose to parties evidence used to select certain entries for purposes of verification by Customs). But see, *Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1371-1373 (CIT 2000) (finding that the Department did violate due process when it violated the terms of the statute by failing to place on the record *ex parte* memoranda discussing *ex parte* meetings between the Department and the petitioner until 'on or about the day of the final determination' and thereby denied the respondents an opportunity to examine and comment on the factual data contained in the memoranda before the final decision-making was complete), *Wieland-Werke AG, Langenberg Kupfer v. United States*, 4 F. Supp. 2d 1207 (CIT

**Comment 51:** *The Department has the Authority to Define the Scope of These Investigations and Determine That Certain Products Are a Separate Class or Kind*

The Government of Canada, the Canadian Provinces and Territories and Canadian industry associations ("Canada") argue that the Department has "the inherent authority to define the scope of an ... investigation."<sup>421</sup> Canada states that "(w)hile the description of the product in the petition must be considered by the Department, the Department cannot abdicate all responsibility to the petitioner to define the scope of the petition."<sup>422</sup> Canada asserts that in particular the Department is obligated to determine if merchandise included in the petition actually constitutes one class or kind of merchandise.<sup>423</sup> It contends that the Department has a legal obligation to limit the imposition of antidumping duties to those products actually determined to be unfairly traded. Canada state that the Department need not defer to the petitioners regarding the definition of the scope and must determine whether certain species constitute a different class or kind of merchandise and certain product may be excluded.

**Department's Position:** The Department states its position on its authority to define or clarify the scope of an investigation in the introduction of this section and in the *March 12 Scope Memo*.<sup>424</sup>

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1998)(finding that the Department obtained factual information after the record closed and used such information in its decision-making for the final determination without allowing the parties to comment on it). Neither of these situations exist in the present case because the Department provided the parties with ample time to consider and respond to arguments raised by the parties, present oral argument on these topics, and did so before the final determination.

We disagree with any parties arguing that the Department's action in the present case are similar to *Nippon Steel*, where the CIT determines that the Department violated the statute by failing to place evidence of *ex parte* memoranda on the record until the day of the final determination, *Nippon Steel* is distinguishable from the *Softwood Lumber* investigations for two reasons. First, unlike in *Nippon Steel*, the Department complied with the terms of the Act, which required that the Department hold a hearing before the final, provide notice to the parties, and stop accepting factual information in a reasonable period of time before the final so that parties could comment on the information prior to the final. Second, in the present case, the Department went to great lengths to ensure that all record evidence was available for comment by the parties long before the date of the final determination, thereby providing the parties ample time to comment, rebut or clarify any arguments, including scope issues. Therefore, the Departments' action in the present investigations are unlike those actions in *Nippon Steel* where the CIT found that the Department violated a party's procedural due process rights. Thus, the Department afforded all parties due process under the law.

<sup>421</sup> See e.g. *Koyo Seiko Co., Ltd. v United States*, 834 F. Supp. 1401, 1403 (CIT 1993)

<sup>422</sup> See case brief regarding scope and class or kind issues from the Government of Canada (March 15, 2002) (GOC scope brief) at 1.

<sup>423</sup> See *Torrington Co. v. U.S.*, 745 F. Supp. 718, 722 (CIT 1990).

<sup>424</sup> See *March 12 Scope Memo* at 2-5.

**Comment 52: Class or Kind of Products****A. Western Red Cedar**

Weyerhaeuser and USRCMA (jointly, the WRC requesters) argue that while no one characteristic of WRC may be conclusive under the class or kind factors, taking cumulatively all of the factors into account, the evidence overwhelmingly establishes that WRC is a separate class or kind of merchandise. The Government of Canada, Canadian Provinces and Territories and Canadian industry ("Canada") concur with this assertion. The WRC requesters reject the notion that all softwood lumber represents a continuum. They assert that the boundaries of the petitioners' continuum are drawn in a completely arbitrary fashion and suggest that if the logic of the continuum arguments is actually applied, one would have to include hardwood species in the scope of the investigations as well. They suggest that the *March 12 Scope Memo* in which we make our determinations regarding requests for separate class or kind treatment ignores much of the evidence on the record. The WRC requesters maintain that WRC as a species is unique and constitutes a distinct class or kind of merchandise.

The petitioners argue that the Department properly found that analysis of the *Diversified Products* criteria demonstrates that WRC is not a separate class or kind of merchandise distinct from other softwood lumber.

*WRC's physical characteristics set it apart from other species:* The WRC requesters assert that a basket of characteristics distinguish WRC as a unique species. They insist that the Department ignored this basket of characteristics in making a determination that WRC fits within a continuum of softwood species. The WRC requesters take issue with the Department's finding on WRC and assert that the Department's decision contradicts the Department's recognition of the commercial significance of many of WRC's physical attributes. In this regard, they cite the Department's acknowledgment of both WRC's natural durability and low structural strength. They fault the Department's analysis of WRC's physical characteristics in general, alleging that the Department has considered particular attributes of WRC that other species might also possess without considering the sum of WRC attributes. The WRC requesters argue repeatedly that it is this combination of attributes that makes WRC unique as a species and that it is unfair to single out individual attributes that certain other species share with WRC.

The WRC requesters consider the Department's statement that the natural resistance of WRC to decay is not enough to put WRC in a class by itself to be particularly egregious.<sup>425</sup> They note that the Department supports its conclusion by citing a recommendation of an independent expert that WRC be pressure treated for certain

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<sup>425</sup> *March 12 Scope Memo* at 24.



applications.<sup>426</sup> The WRC requesters suggest that the Department's use of this information is misleading since it only pertains to certain WRC products which are to be exposed to extreme conditions. They state that the same source states that untreated WRC in such applications simply has a reduced life span and alludes to the fact that pressure treatment of WRC is difficult and rare. In the same paragraph,<sup>427</sup> apparently referring to an earlier exchange of arguments,<sup>428</sup> the WRC requesters state that "{c}omparing the coatings occasionally applied to WRC by a do-it-yourselfer to a complex pressure treatment manufacturing process is a non sequitur."

The WRC requesters list a number of unique WRC attributes which they say the Department has recognized.<sup>429</sup> They argue that while the Department acknowledges the commercial implications of these attributes, it fails to analyze them sufficiently. They argue that the Department's analysis is flawed for failing to consider such characteristics as dimensional stability, insulation properties, light weight and fragrance in sufficient detail. They suggest that the Department's comparison of WRC with yellow cedar reveals the weakness of the Department's analysis, noting that, when compared to WRC, yellow cedar has a different appearance, fragrance and texture when cut.

The petitioners fault the logic and factual claims of the WRC requesters' physical characteristics position. They assert that the WRC requesters have simply described all the distinguishing features of one point of the continuum of softwood lumber species and claim that it is therefore a separate class or kind. The petitioners contend that by this logic any product or species on the softwood lumber spectrum could claim to be a separate class or kind of merchandise based on a combination of characteristics. They argue that the WRC requesters implicitly recognize the flaw in their logic when they claim that "WRC is unique and distinct from all other softwood species."<sup>430</sup> The petitioners assert that the WRC requesters are arguing "that WRC and only WRC is different."<sup>431</sup> They remark that the WRC requesters have never explained why only WRC is so different as to constitute a separate class or kind but all the other species remain in a

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<sup>426</sup> See Weyerhaeuser and USRCMA joint scope brief. The source cited is Josefina Gonzalez, *Growth, Properties and Uses of Western Red Cedar*, Forintek Canada Corp. Special Publication No. SP-37 (1997) at 23. An extract of this publication is provided in a letter from Weyerhaeuser (May 21, 2001) (Weyerhaeuser 5/21/01 letter) at Exhibit 3.

<sup>427</sup> Weyerhaeuser and USRCMA joint scope brief at 10.

<sup>428</sup> See letter from the petitioners, June 18, 2001 at 9 and letter from Weyerhaeuser (July 20, 2001) (Weyerhaeuser 7/20/01 letter) at 4-5.

<sup>429</sup> Weyerhaeuser and USRCMA joint scope brief at 10.

<sup>430</sup> Weyerhaeuser and USRCMA joint scope brief at 6.

<sup>431</sup> Petitioners rebuttal scope brief at 24.

single continuum. The petitioners contend that the WRC requesters' are also flawed on a factual basis. They argue that WRC physical characteristics do overlap with those of other species and are in some ways indistinguishable from other species.<sup>432</sup>

*End-Use/Customer Expectations:* The WRC requesters assert that the Department's findings in the *March 12 Scope Memo* on the end-uses of WRC are based on a number of generalizations that are completely unsupported and erroneous. As an example, they suggest that the Department erred in using decking as an example of an application where WRC is used for structural purposes. The WRC requesters contend that in decking, WRC is only used for deck boards and not for the joists that underpin the deck. The WRC requesters also maintain that the record shows that, in general, other softwoods are not substitutes for WRC in decking or other applications. Rather, they argue that the record shows that the main substitutes for WRC are composites, cement products and bricks.<sup>433</sup>

The WRC requesters contend that they never argued, as the Department suggests,<sup>434</sup> that non-structural items are outside the scope of the investigations, but have argued that since WRC is not generally used for structural and framing purposes, the lack of interchangeability is a factor that serves as a basis for a separate class or kind finding.

The WRC requesters note the Department agrees with them that WRC is used predominantly in high-end applications. However, they argue that the Department is incorrect in opining that WRC is interchangeable with other high-end woods such as old-growth Sitka spruce, hemlock and Douglas fir.<sup>435</sup> The WRC requesters dismiss the Department's observation that "from a technical standpoint"<sup>436</sup> WRC could be substituted for other softwood products in structural applications, stating that the Department's decision must be grounded in reality, not the hypothetical. They assert that the Department has failed to provide support or take into account contrary information on the record when it concludes that the interchangeability of WRC with other high-end types of lumber anchors WRC firmly to a broader single class or kind of merchandise.<sup>437</sup>

The WRC requesters criticize the Department's analysis of customer expectations in which the Department considers the possibility that a customer can build a deck from

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<sup>432</sup> *Id.* at 25.

<sup>433</sup> Weyerhaeuser 5/21/01 letter at 9 and 11 and Weyerhaeuser 7/20/01 letter at 15 and 16.

<sup>434</sup> *March 12 Scope Memo* at 25-26.

<sup>435</sup> *Id.* at 26.

<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

either treated Spruce-Pine-Fir or WRC.<sup>438</sup> They assert that the Department undercuts its own argument of interchangeability when it observes that customers will know that a WRC deck will be higher quality in terms of appearance and durability.<sup>439</sup> The WRC requesters maintain that the fact that customers are willing to pay twice as much for a WRC deck as for a pine deck clearly shows that they distinguish WRC from other softwoods.

In the discussion of WRC's end-use as a distinguishing factor, the WRC requesters dismiss the Department's conclusion that there are other varieties of high-end lumber in the same price range dedicated to the same end-uses.<sup>440</sup>

The petitioners assert that WRC is highly substitutable with other species and reject the WRC requesters claim that WRC is unique because it is ideal for particular specialty appearances. The petitioners reiterate that non-structural lumber is part of the scope. They also maintain that other species, such as redwood, Douglas fir, incense cedar overlap with WRC in end uses such as decking, fencing, shingles, and interior and exterior trim and fascia..<sup>441</sup>

The petitioners contend that customer expectations are similar to those of certain other products, including expectations regarding price, such that WRC cannot be distinguished as a separate class or kind on the basis of this criterion. They state that there is naturally competition based on price and performance all along the continuum of softwood lumber with overlapping uses.<sup>442</sup>

*Whether WRC is sold through distinct channels of distribution:* The WRC requesters contend that the Department offers no support for its conclusion that other high-end lumber products are marketed through specialized channels similar to those which the WRC requesters describe for WRC. They maintain that the channels of distribution as described in earlier submissions are unique for WRC.<sup>443</sup> In addition they argue that WRC distributors store, handle and transport WRC differently than other softwood products.

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<sup>438</sup> *Id.* at 27.

<sup>439</sup> *Id.*

<sup>440</sup> See *Id.* and Weyerhaeuser and USRCMA joint scope brief at 15.

<sup>441</sup> Petitioners rebuttal scope brief at 26 and Exhibit 1, "Uses of Various Species of Softwood Lumber." See also letter petitioners, December 6, 2001 (petitioners 12/6/01 letter) at 3.

<sup>442</sup> Petitioners 12/6/01 letter at 3.

<sup>443</sup> See Weyerhaeuser 5/21/01 letter at 15-17 and Weyerhaeuser 7/20/01 letter at 16 and attachment 10.

The petitioners maintain that the WRC requesters ignore ample evidence that many distributors and remanufacturers specialize in high-end products from many species in addition to WRC and that WRC is not unique simply because certain distributors and remanufacturers specialize in it.<sup>444</sup> They argue that evidence on the record shows that some distributors carry both WRC and other products.<sup>445</sup>

*Whether the manner in which WRC is advertised and displayed is unique:* The WRC requesters argue that the Department's finding that other high-end lumber products are advertised in much the same manner as WRC is unsupported and erroneous. They state that while there is advertising of other species, there is nothing near the scope or magnitude devoted to WRC. They state that Weyerhaeuser, as the largest softwood lumber producer in the United States and North America, is well qualified to know about how WRC is marketed and sold. The WRC requesters acknowledge that Weyerhaeuser has a separate website for Douglas fir, but argue that this website is much less elaborate than their site for WRC. The WRC requesters also note that WRC has its own association, the Western Red Cedar Lumber Association which connects an extensive network of specialized WRC producers, manufacturers and distributors. They argue that contrary to the Department's conclusion that marketing WRC is similar to other high-end products, the record shows that Weyerhaeuser, the WRCLA and other specialized businesses have developed a broad range of WRC promotional materials in different media that are unlike anything developed for other softwood products.

The petitioners dispute WRC requesters' claims that the method of marketing WRC products is unique and argue that other high-end products are marketed in the same manner. They assert that there is ample evidence on the record of this fact.<sup>446</sup> The petitioners reject the notion that the brand name and website that Weyerhaeuser devotes to WRC are so unique as to create a clear class or kind dividing line for WRC under this criterion. The petitioners observe that Weyerhaeuser maintains websites for other products as well.

Department's Position: For WRC and all of the other products discussed below, in deciding whether a product included in the scope of a proceeding falls within a separate class or kind of merchandise, the Department looks for clear dividing lines through the application of the five *Diversified Products* criteria which may distinguish the product in question from other products for which the petitioners have requested relief. In the case briefs submitted on class or kind in the instant investigations, many respondents and interested parties appear to discount the Department's analysis on this score. For each product or product group for which a party provided even minimal *Diversified Products*

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<sup>444</sup> Petitioners rebuttal scope brief at 27. See also petitioners 12/6/01 letter at 3.

<sup>445</sup> See attachment to letter from the petitioners, October 24, 2001.

<sup>446</sup> Petitioners 12/6/01 letter at 3.



analysis, the Department generally examined each of the five *Diversified Products* criteria to the extent the information on the record permitted it do so, and considering the totality of the evidence in making its determination.

Everybody involved in the proceedings, including the petitioners, agrees that there are significant differences found among the wide range of products included in the scope of the investigations. As the *March 12 Scope Memo* clearly demonstrates, we went to great lengths to identify and understand these differences for all of the products for which separate class or kind status was requested or suggested. Contrary to assertions that the Department based its class or kind finding only on selected submissions in the record,<sup>447</sup> we based our decision on a examination of a wide range of products included in the scope. It was on the basis of our comparison of the requested products with each other, and with other products covered by the scope, that we concluded that there was no basis to treat any single softwood species or product as a separate class or kind of merchandise. Although we found some unique physical characteristics and distinct end uses for most of the products for which separate class or treatment was requested, it became clear that these differences were not enough to make any individual product a separate class or kind of merchandise. Looking at all of the products requested, we noted a commonality among the very distinctions which each requesting party touted as the basis for separate class or kind treatment for their specific product. It also became apparent that other products in the softwood lumber spectrum for which we had not received requests also possessed distinctions that, pursuant to the rationale of class or kind requests we had received, would also be candidates for separate class or kind treatment. Given the diversity of products, even in the high-end sector of the lumber family, we found no clear dividing line by which to treat products as outside the class or kind of softwood lumber products.

At the scope hearing, the representative of the Government of Quebec observed that there should probably be a single separate class or kind of merchandise for all high-end appearance grade softwood lumber.<sup>448</sup> Species such as Douglas fir provide both appearance grade lumber for speciality products and dimension lumber for basic construction, so species does not appear to provide a means of distinguishing such a class or kind. It also does not seem likely that we could administer any order on this basis. We have concluded that our current treatment of softwood lumber products as a single continuum of products within one class or kind is supported by the record and is reasonable. Paradoxically, it is as much the diversity of lumber production as the characteristics that all softwood lumber have in common that lead us to continue to treat all softwood lumber as a single class or kind of merchandise. Moreover, in all of the other investigations on softwood lumber products that the Department has conducted in

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<sup>447</sup> See e.g. Weyerhaeuser and USRCMA joint scope brief at 8.

<sup>448</sup> Hearing Transcript, March 19, 2002, at 35, 38-39.

the last twenty years, covers all softwood lumber, whether used in structural or other applications.

Having made these general observations on the difficulty of separating individual lumber products out of the spectrum as separate classes or kinds of merchandise, we nevertheless had to validate our general conclusion with product-specific *Diversified Products* analysis of the softwood lumber products for which separate class or kind treatment was specifically requested. As we outlined in the summary of arguments, requesting parties have raised serious questions about the depth of our product-specific analysis for our preliminary decision. We have re-examined our product-specific class or kind analysis for all products which parties addressed in the case briefs. We summarize our review of our *Diversified Products* analysis below for Western red cedar, Eastern white cedar, Eastern white pine, selected shop or better lumber, flange stock and bedframe stock. We also consider class or kind arguments for railroad ties which we did not explain in detail our class or kind decision.

*Physical Characteristics:* In our preliminary analysis, we noted a number of WRC's distinctive characteristics, including appearance, natural durability, fragrance, dimensional stability, thermal and sound insulation qualities, and light weight. In their case brief, the WRC requesters maintain that, given our recognition of these characteristics, only one conclusion was possible. We maintain that WRC's distinct physical characteristics, even when considered in combination, do not provide us with the clear dividing line necessary to consider WRC as a separate class or kind of merchandise. We found in our class or kind determination that, as important as these characteristics are to WRC in the market place, they are by no means unique to the species. The record we have concerning the other species-related class or kind requests (Eastern white pine, Eastern white cedar and shop and better made from four old-growth species) already provides ample evidence that there are other species covered by the scope that have similar distinct characteristics. The Department found that these other species possess similar distinct and commercially important characteristics such as attractive appearance (all named), light weight (EWC and EWP), natural durability (EWC and old growth shop and clear) and lower structural strength (EWP and EWC). By noting these similar characteristics we are not suggesting that these species are mirror images of WRC. Rather, we are simply indicating that the shared distinctions lead us to agree with petitioners that WRC is not so different from other softwood species in its physical characteristics that it cannot be linked on a continuum of softwood lumber products. If we add appearance grade lumber from all species and lumber milled from other cedar species to this analysis, the linkage of WRC to the continuum increases. We acknowledge, as the WRC requesters demonstrate with the example of yellow cedar's less-than-desirable fragrance and workability,<sup>449</sup> that none of the other species is a perfect match with WRC, but the same can be said in comparing the physical characteristics of

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<sup>449</sup> Weyerhaeuser and USRCMA joint scope brief at 12.

these other species with each other. We thus agree with the petitioners that WRC's physical characteristics overlap with those of other species to one degree or another, linking WRC to other species and products covered in these investigations.

*End-use:* In our *Diversified Products* analysis of WRC, we considered the ultimate use criterion at length. We stated that a fundamental underpinning of the WRC requesters' separate class or kind argument rested on the premise that WRC is not primarily used as dimension lumber for structural or framing purposes and that this argument presupposes that only lumber used in structural applications is covered in these investigations.<sup>450</sup> The WRC requesters have protested that they never said that non-structural items were outside of the scope, but assert that they simply sought to establish that the lack of interchangeability between structural lumber and non-structural WRC is a factor that serves as a basis for a separate class or kind finding. The Department agrees with WRC respondents that in general there is little actual substitution of WRC in structural applications where a less expensive SPF might better serve the purpose. We also agree with the WRC requesters that the hypothetical possibility that WRC could be used for structural purposes does not by itself negate the WRC requesters' argument. However, our initial conclusions concerning the ultimate use of WRC did not focus on its possible interchangeability with dimension lumber. It focused on common applications with other high-end lumber products. The record is replete with examples of other non-structural lumber that have applications in common with WRC. Weyerhaeuser provided in one of its own submissions a study that reported that WRC is used as shingles paneling, siding, poles and garden accessories such as pergolas, gazebos, fence panels and sheds.<sup>451</sup> The Government of Quebec reported that Eastern white cedar is also used as shingles, poles, fencing and outdoor furniture.<sup>452</sup> We therefore continue to conclude that there is a high degree of substitutability between WRC and other species used in high-end applications requiring good appearance and durability. If we were to apply the WRC requesters' arguments concerning the end-use criterion and WRC, it would be inconsistent on our part to ignore the other high-end products which would also satisfy the end-use criterion on this basis. We agree with petitioners that there is no clear dividing line between the multitude of lumber products with relatively unique end-uses and other softwood lumber products.

*Ultimate Customers Expectations:* We do not dispute the WRC requesters' position that customers that purchase WRC have a distinct set of expectations about the products made from the species. The expectations are based on WRC characteristics that make it particularly suitable for certain applications. However, our review of the end-uses of

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<sup>450</sup> March 12 Scope Memo at 25-26.

<sup>451</sup> Weyerhaeuser 5/21/01 letter at attachment 3.

<sup>452</sup> Letter from the Government of Quebec, May 21, 2001 (GOQ 5/21/01 letter), at 11 and attachments 1 and

WRC reinforced our conclusion that there is overlap between WRC applications and those of other selected species such as Eastern white cedar and old growth Douglas fir. The WRC requesters present the argument that WRC's unique customer expectations are reflected in the fact that the customers are willing to pay a much higher price for WRC than other softwoods. We note however that high-end customers are willing to pay a higher price for other appearance grade products as well, such as Eastern white cedar and Eastern white pine. This fact was well documented in this proceeding not by the petitioners, but by respondents and interested parties seeking separate class or kind treatment for those species.

*Channels of Trade:* The WRC requesters argue that the channels of trade for WRC are normally quite distinct from that of dimension lumber. However, WRC requesters have not demonstrated that the WRC channels of trade are unique when compared to those of other appearance grade lumber where a high proportion of production is first sold to remanufacturers. The petitioners in an earlier submission provided examples of other species that were marketed through specialized channels.<sup>453</sup>

*Manner in Which Product is Advertised and Displayed:* While the WRC requesters have indicated that Weyerhaeuser's promotional program for WRC is one of its bigger species-specific marketing efforts, we have also noted the fact that Weyerhaeuser has advertising programs for other high-end species.<sup>454</sup> We have learned from our review of the marketing of EWP and EWC that distributors of those species also use similar sorts of targeted marketing strategies which Weyerhaeuser and International Forest Products, Ltd. employ for WRC.<sup>455</sup> We therefore find that while the WRC marketing programs of the companies for which we have information are impressive in their scope, they are not so different from other high-end lumber promotional programs as to provide us with a clear dividing line for WRC with respect to this criterion.

#### B. *Eastern White Cedar*

The Government of Quebec (GOQ)<sup>456</sup> claims that Eastern White Cedar (EWC) is both a separate class or kind of merchandise and falls outside the scope of the investigations.

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<sup>453</sup> Petitioners 6/18/01 letter at 17.

<sup>454</sup> *Id.*

<sup>455</sup> See e.g. GOQ 5/21/01 letter at 14-16.

<sup>456</sup> The Government of Canada also supports a finding of a separate class or kind for EWC, but does not claim that it should be excluded from the scope of the investigations on that basis. See case brief regarding scope and class or kind issues from the Government of Canada, March 15, 2002 (GOC scope brief) at 5, 7-8. The QLMA requested that EWC be excluded from the scope of the investigations but did not request a determination for a separate class or kind of merchandise. See case brief regarding scope and class or kind issues from the QLMA (March 15, 2002) (QLMA scope brief).



The GOQ maintains that EWC is clearly not included in the scope of the petition which describes the subject merchandise as a commodity product used in structural applications.<sup>457</sup> This is in contrast to EWC which is not suitable for structural uses due to its physical characteristics, and does not compete with commodity lumber due to its high price and specialized nature.<sup>458</sup> However, according to the GOQ, if the Department finds the petition to be ambiguous with regard to EWC, then it is obliged to apply the *Diversified Products* criteria in order to determine if this species is a separate class or kind of merchandise from that covered in the petitions. In applying the *Diversified Products* criteria, the GOQ emphasizes that it is not necessary for the Department to determine that EWC is a completely unique product without any overlap in characteristics with other softwood species; rather, it states that it is adequate for the Department to merely find that EWC is sufficiently different from the other product types.<sup>459</sup> Based upon significant differences between EWC's and the subject merchandise's physical characteristics, primary uses and expectations of users, channels of trade, and the manners in which the products are advertised or displayed, the GOQ states that in the final class or kind determinations, the Department should reverse its earlier determination that EWC does not constitute a separate class or kind and, furthermore, exclude this species from the scope of the investigations.

The petitioners support the Department's finding that EWC is not a separate class or kind of merchandise in this proceeding. Although the petitioners acknowledge that there are some differences between EWC and other softwoods, they state that there is sufficient overlap in all five *Diversified Products* criteria so as to render a clear division between EWC and all of the other softwood lumber species impossible.<sup>460</sup> The petitioners counter the GOQ's claim that EWC is appearance-grade lumber, unsuitable for structural purposes and, therefore, a different class or kind and outside the scope of the investigations, by stating both that EWC can be, and is, used for construction/structural purposes and that appearance-grade lumber is within the scope of the investigations.<sup>461</sup> The petitioners maintain that EWC is a part of a single class or kind of the subject merchandise.

**Department's Position:** The Department holds that EWC cannot be distinguished as a separate class or kind of softwood lumber in this investigation. The Department has based this decision on a careful and thorough evaluation of the entire case record

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<sup>457</sup> See case brief regarding scope and class or kind issues from the Government of Quebec, (March 15, 2002) (GOQ scope brief) at 12.

<sup>458</sup> See *Id.* at 13.

<sup>459</sup> See *Id.* at 15.

<sup>460</sup> See petitioners rebuttal scope brief at 33-35.

<sup>461</sup> See *Id.* at 34.

concerning EWC as it relates to the *Diversified Products* criteria.<sup>462</sup> While EWC is a separate species, it substantially shares each of the *Diversified Products* criteria with other softwood lumber species, particularly the other cedar species, including WRC for which a separate class or kind determination was also requested. Therefore, the Department finds that it is unable to discern a clear division between EWC and the other species that constitute the subject merchandise.

### C. *Eastern White Pine*

Tembec Inc., the Ontario Forest Industries Association, the Ontario Lumber Manufacturers Association, the Government of Canada, and the Government of Quebec (collectively, the requesters,<sup>463</sup> for purposes of this comment), argue that Eastern White Pine (EWP) is a separate class or kind of merchandise and that the Department's failure to come to the same conclusion in its class or kind determinations is due to its inadequate application of the five *Diversified Products* criteria. Tembec, OFIA, and OLMA allege that the Department's preliminary class or kind determinations did not comply with "the standard of review set forth in 10 U.S.C. § 1516a" which states that the Department's determination must be supported by "substantial evidence on the record."<sup>464</sup> The requesters claim that the Department based its determination on a one-page National Arbor Day Foundation circular, placed on the record by the petitioners, which stated that EWP is in demand today for use as structural lumber, while ignoring the numerous declarations and other evidence to the contrary on the record.<sup>465</sup> Should the Department take the entire record of this case into consideration and carefully evaluate each *Diversified Products* criteria, which the requesters assert that it must do if it finds any ambiguity in the petitions or notices of initiation, then the Department cannot fail to determine that EWP is a distinct product. The requesters point to the different physical characteristics, uses, purchasers, advertising, channels of trade, and price movements of

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<sup>462</sup> See March 12 Scope Memo at 28-29.

<sup>463</sup> The QLMA also requests that EWP be excluded from the scope of the investigations (QLMA scope brief). However, the question of a separate class or kind for this species is not briefed in that submission. Furthermore, the QLMA requests that three additional softwood lumber species be excluded from the scope of these investigations: Eastern Hemlock, red pine, and larch. The QLMA argues that there is a "lack of intent" on the part of the petitioners to include these species in the scope, "evidenced by their failure to specifically address them" in the petition. (QLMA scope brief at 6) The petitioners claim that these species were specifically included in the scope under HTSUS Heading 4407.10.00. (Petitioners rebuttal scope brief at 17) In its March 12 Scope Memo, the Department determined that all of these species were in the scope of the investigations and that a single class or kind encompassed all of the subject merchandise. (March 12 Scope Memo at 6) In the absence of any further justification on the part of the requesters since the preliminary determination, the Department stands by that decision in this final determination.

<sup>464</sup> See Tembec scope brief at 2-3 and OFIA/OLMA scope brief at 2.

<sup>465</sup> See GOQ scope brief at 19. See also Tembec scope brief at 7 and the case brief regarding scope and class or kind issues from OFIA and OLMA (March 15, 2002) (OFIA/OLMA scope brief) at 6.

EWP compared to those of other products subject to these investigations. While the requesters proclaim that EWP is a distinct product according to all five of the *Diversified Products* criteria, they assert that it is possible for as few as two criteria to be met in order for the Department to determine that such merchandise constitutes a separate class or kind.<sup>466</sup>

In addition, certain requesters claim that a determination of EWP as a separate class or kind of merchandise necessitates a further determination that this species is outside the scope of the investigations.<sup>467</sup> These requesters assert that the description of the merchandise provided in the petition, namely that of commodity softwood lumber with a high strength-to-weight ratio produced for structural uses, is not applicable to EWP, which they describe as appearance-grade lumber with a lower strength-to-weight ratio and unsuitable for structural purposes.<sup>468</sup> These requesters therefore ask that after having determined that EWP constitutes a separate class or kind of merchandise, the Department rule that it is also outside the scope of these investigations.

The petitioners reiterate that separate class or kind determinations and scope exclusions are two distinct processes. With regard to scope, the petitioners state that the HTSUS headings cited in the petition clearly encompass all softwood species, including EWP.<sup>469</sup> With regard to whether or not EWP should be considered a separate class or kind of the subject merchandise, the petitioners contend that EWP exists along a continuum of softwood lumber species, sharing physical characteristics, uses, user expectations, channels of trade, and the manner in which it is advertised and displayed with other softwood lumber species, particularly the Western Pines.<sup>470</sup> To support this view, the petitioners refer to affidavits and a U.S. Forest Service publication which they have placed on the record. On the other hand, the petitioners claim, the requesters have relied on "only affidavits from their clients and other interested parties prepared for this litigation."<sup>471</sup> The petitioners support the Department's preliminary determination that EWP does not constitute a separate class or kind and ask that the Department affirm this finding in its final determination.

**Department's Position:** The Department maintains its position that EWP is part of a single class or kind of merchandise in these investigations. The Department has reached

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<sup>466</sup> See letter from Tembec regarding scope and class or kind, March 12, 2002, at 6.

<sup>467</sup> See OFIA/OLMA scope brief at 7-8, Tembec scope brief at 9, and GOQ scope brief at 13.

<sup>468</sup> See GOQ scope brief at 18-19.

<sup>469</sup> See petitioners rebuttal scope brief at 21-22.

<sup>470</sup> See *Id.* at 29-32.

<sup>471</sup> See *Id.* at 29-30.



this conclusion based on a careful and thorough evaluation of the entire case record concerning EWP as it relates to the *Diversified Products* criteria.<sup>472</sup> While the Department acknowledges that differences among softwood lumber species clearly exist, in the case of EWP, they do not rise to the level required for a separate class or kind determination. The Department finds that EWP shares its general physical characteristics with other pine species, particularly the Western Pines. Regarding its uses, the information on the record reveals that not only are EWP's primary uses as an appearance-grade lumber shared with other species including the Western Pines, WRC, and EWC, but it is also used in structural applications along with SPF lumber. User expectations for all appearance-grade lumber are quite similar as they are all based on the appearance of the lumber itself. Claims by the requesters that EWP is sold in unique and distinguishable channels cannot be substantiated with the information on the record. Although EWP may be marketed and displayed separately, so can several other species of softwood lumber such as WRC and EWC.

- D. *Shop and Better Grades of Sitka spruce, hemlock, balsam species, Douglas fir, and cedar 5" and thicker by 5" and wider with a mill price of \$500 U.S. per thousand boarded feet or higher (Shop or better)*

Tebb points out that the Department has said that the interchangeability of shop or better type of lumber with regular dimension lumber is unlikely. In response to the Department's assertion, in the *March 12 Scope Memo*, that the different high-end products are comparable to one another and may compete with shop or better lumber, Tebb argues that there are differences which make it unique from other high-end lumber and dimension lumber. First, shop and better comes from large, old growth unlike other high-end lumber products. Further, claims Tebb, old-growth lumber is not harvested in the United States and, therefore, there is nothing within the United States with which to compare it. Also, Tebb argues that shop and better lumber is manufactured for superior appearance and visible applications in home construction and is far more expensive, and less strong, than dimension lumber, which is graded on strength rather than appearance and used in applications that will ultimately not be visible once construction is completed.

Tebb argues that the Department, by concluding shop or better lumber is part of a continuum of softwood lumber, was overly broad in its ruling. Tebb claims shop or better is sufficiently unique under the *Diversified Products* criteria to be given separate class or kind treatment and it analyzes the five criteria to support this claim. First, Tebb argues that shop and better lumber is manufactured for a desirable appearance and, therefore, its physical characteristics are unique from the other softwood lumbars in the investigations. Second, shop and better lumber ultimate customers have radically different expectations than softwood products customers do. Therefore, shop and better

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<sup>472</sup> See *March 12 Scope Memo* at 29-31.

lumber is not interchangeable with dimension lumber. Third, the ultimate use of shop and better wood is for appearance products and musical instruments, which is entirely different from the uses of dimension lumber. Lastly, Tebb argues that shop and better lumber is distributed through different trade channels and advertised differently than dimension lumber.

The petitioners respond that shop and better lumber is part of the softwood lumber continuum. They disagree with Tebb's assertion that there is nothing to compare shop or better lumber to, stating instead that it, and other high-grade lumber, competes directly with high-grade Canadian lumber. Furthermore, the petitioners claim, remanufacturing of lumber does not remove it from the scope. Therefore the remanufacturing Tebb performs on the softwood lumber it imports to produce shop or better lumber should not remove it from the scope or make it a separate class or kind. In response to Tebb's *Diversified Products* criteria claims the petitioners argue that Tebb's comparison of shop and better to dimension lumber was too narrow. The petitioners emphasize that the investigations are not limited to dimension lumber, and to be a different class or kind, shop or better lumber must be found to be different from all softwood lumber, something which the petitioners argue has not occurred. The petitioners also argue that ultimate use of a product is not determinative of class or kind and concluded that shop or better should not be considered a separate class or kind of softwood lumber.

Department's Position: The Department recognizes that Fred Tebb's shop and better lumber has distinct physical characteristics in terms of appearance, texture and dimensions, but does not find these characteristics significantly different to draw a clear dividing line between the shop and better and other high-end lumber products. We note that both physical characteristics and price make shop and better an unlikely substitute for regular dimension lumber used for construction. However, as we argued in our discussion of WRC, EWC and EWP in our class or kind determination, the high-end nature of a product does not by itself make it a separate class or kind of merchandise as there are other high-end products in the scope of the investigations which may compete with the shop and better grades considered here. For the same reason, we are unable to distinguish shop and better's market channels and marketing methods to the extent that we would consider the shop and better products a separate class or kind of merchandise.

E. *Bed Frame Stock/Square-end Bed Frame Components*

Abitibi argues that square-end bed frame components, including end filters, L-braces, center support and similar products represent a distinct class or kind of merchandise due to their similarity to radius-end bed frame components and their differences from generic softwood lumber, in terms of *Diversified Products* criteria. The Government of Canada agrees with this assertion. If the Departments does find square-end bed frame components to represent a different class or kind of merchandise Abitibi argues, it should be excluded from the scope of the petition and hence the investigations. Furthermore, Abitibi asserts that these products should be excluded from the scope of the investigations

due to their customization, value-added processing, dedicated use, and their lack of interchangeability with the type of lumber targeted by the petition.

The petitioners respond by maintaining that their previously submitted letter shows that square-end bed frame components are “merely a collection of boards.”<sup>473</sup> The petitioners support the Department’s preliminary finding that it is difficult to distinguish square-end bed frame components from other softwood lumber defined by the scope of these investigations and, therefore, the components do not represent a different class or kind of merchandise.

Abitibi argues that, while the Department recognizes the *Diversified Products* criteria, as outlined in the *March 12 Scope Memo*, it only addresses the “physical characteristics,” which is the first of five criteria, in its analysis. Further, Abitibi feels that there is no indication that meeting one of the five criteria is dispositive and therefore believes the Department must analyze and make a determination that is inclusive of all five *Diversified Products* criteria.

Abitibi points out that the exclusion of radius-end bed frame components from the scope of the petition is recognized by both the petitioners and the Department.<sup>474</sup> Abitibi then argues that the exclusion of radius-end bed frame components but not square-end bed frame components is logically inconsistent and cannot be reconciled for the following five reasons. First, Abitibi claims that it has demonstrated that box spring manufacturers generally require both radius-end and square-cut end frame components.<sup>475</sup> Second, both types of components are customized during manufacturing in such a way that it is difficult to distinguish one from the other. Third, Abitibi purchase agreements with manufacturers cover both types of components. Fourth, both radius-end and square-cut end frame components have the same end use, and purchasers expect both products to be ready to use, *i.e.*, not requiring any significant additional cutting or processing. Finally, both types of components are targeted at mattress box spring manufacturers and sold through identical channels of distribution.

The petitioners respond that, due to radius cuts on both ends for facilitating bed-frame construction, radius-end bed frame components are different from square-end bed frame components, citing their previous submissions for support.

- A. Physical Characteristics: Abitibi argues that, despite the Department’s findings to the contrary, the physical characteristics of square-end bed frame components are indeed noticeably different from other lumber

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<sup>473</sup> See the petitioners 6/18/01 letter at attachment 15 (U.S. Customs Ruling HQ960703 (Aug. 26, 1997)).

<sup>474</sup> See, *e.g.*, *Id.* at 41 fn. 150.

<sup>475</sup> See Abitibi’s May 21, 2001 letter at Annex 4.

products and quite unlike generic lumber. Further-processing customizes square-end bed frame components to customer-requested specifications for the size of bedframe for which the component is intended. Abitibi states that the process of turning softwood lumber into customer specified square-end bed frame components means Abitibi incurs additional production costs and, therefore, prices the components "significantly" higher than dressed and dried boards of standard dimensions.

Additionally, Abitibi claims that the dimensions of square-end bed frame components easily distinguish them from standard dimension lumber. Specifically, Abitibi states that square-end bed frame components are either much smaller, shorter, of odd thickness, or uniquely shaped, as in the case of the "L-Brace."<sup>476</sup> Further, the fact that they are sold in boxes of 2,000 to 3,000, generally shipped with radius-end bed frame components, and sold as part of a complete set of bed-frame components makes them easily distinguishable according to Abitibi.<sup>477</sup> Abitibi proposes an end-use certificate could be attached to square-end bed frame components as is done with Maritime lumber from the CVD investigation of softwood lumber from Canada.

- B. Expectations of Ultimate Purchasers and Ultimate Use: Abitibi argues that, unlike end users of softwood lumber, bed frame manufacturers use square-end bed frame components made expressly to meet their specifications. They also argue that these components are ultimately used only to manufacture box spring frames whereas softwood lumber has multiple uses.
- C. Channel of Trade and Advertising: Abitibi argues that square-end bed frame components are marketed distinctly from softwood lumber products and have a narrower channel of distribution than that of softwood lumber. Square-end bed frame components are not sold to retailers and are generally sold through annual contracts with fixed prices, whereas softwood lumber is sold to a variety of buyers, including retailers, is often sold in spot sales, is not sold under annually fixed contracts, and is subject to a high degree of price volatility.<sup>478</sup>

Department's Position: We agree with the petitioners that it is difficult to distinguish square-end bed frame components from other lumber, based on their physical characteristics, but as a review of our statement concerning bed frame stock will reveal,

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<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

<sup>478</sup> *Id.*

we also analyzed these products under the *Diversified Products* criteria involving end-use and market channels to the extent the information on the record permitted us to do so.<sup>479</sup> In fact, we stated that there were relatively stronger arguments for separate class or kind treatment under these criteria than under physical characteristics. However, we determined that the differences did not rise to those of a separate class or kind. Regarding customer expectations, we note that these are bound to the specific end use, as is the case with many other lumber specialty products. However, because there are a multitude of lumber speciality products that are defined by their end use, it is not practical to consider each one as a potential separate class or kind of merchandise. On the same basis, for purposes of determining a separate class or kind, we are unable to draw a clear line between bedframe components and other speciality lumber products when we consider the marketing channels and methods of advertising.

The difference between the square-end and radius end bedframe components is not a class or kind issue. We agree with the petitioners that both products are lumber. We granted a scope exclusion to the radius cut components because the petitioners agreed to this exclusion based on the fact that radius cut components are readily identifiable.

#### F. *Flange Stock*

Tembec claims that the Department must apply the five *Diversified Products* criteria to determine if flange stock is a separate class or kind of merchandise and cites multiple cases to support this claim.<sup>480</sup> Tembec stresses that, since the class or kind determination failed to consider these criteria the final determination must address all five criteria. Furthermore, Tembec asserts that because neither the petition nor the notice of initiation in this case specifically references flange stock and, since its characteristics are different from the softwood lumber described in the petition, a *Diversified Products* analysis must be done.

Tembec argues that flange stock has the following physical characteristics that render it unique from softwood lumber and, therefore a separate class or kind of merchandise: First, flange stock, unlike softwood lumber, is engineered to be straighter, denser, stronger, more stable, and contains fewer natural defects due to an optimization process during manufacturing. Second, it is produced in only two dimensions, mainly 2x3 and 2x4, unlike softwood lumber which is produced in a wide range of dimensions. Finally, flange stock is easily identified by its length, generally 48 and 52 foot lengths, whereas softwood lumber is limited by the length of the log from which it was cut. Canada concurs with Tembec that flange stock is a separate class or kind of merchandise.

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<sup>479</sup> March 12 Scope Memo at 32.

<sup>480</sup> See Tembec scope brief at 6 fn 5.



-165-

The petitioners respond that flangestock is not a separate class or kind of merchandise and incorporate, by reference, arguments for this position made in previous submissions. The engineering that flangestock undergoes does not alter it to the point that it would be considered non-subject merchandise but, rather, argue the petitioners, it is a product that may be used as input to make an engineered wood end-product.

Tembec argues that flange stock is engineered for highly specific uses that the scope of the investigations does not cover. Tembec also argues that neither the petitions nor the notices of initiation contain allegations or information necessary to impose countervailing or antidumping duties on flange stock as required under sections 701 and 731 of the Act, respectively,<sup>481</sup> and that because flange stock is a separate class or kind of merchandise and not specifically mentioned by the petitions or the notices of initiation it must be excluded from the scope of the investigations.

The petitioners respond that flange stock is not a separate class or kind and, therefore, cannot be excluded from the scope of the investigations on these grounds. Furthermore, the petitioners contend that it would continue to fit into the scope even if it were erroneously considered a different class or kind than generic softwood lumber. The petitioners claim that for Tembec<sup>482</sup> to assert that flange stock should be excluded on the grounds of class or kind is to assume the results it seeks. In response to Tembec's claim that because flange stock was not specifically named it must be excluded from the scope, the petitioners state that not only are they not required to name every product, but to do so would make it virtually impossible to define the scope of the investigations.

**Department's Position:** We have re-examined all the *Diversified Products* arguments presented by the respondents on flange stock. While the particular length of certain finger-jointed flange stock presents an unusual characteristic, we still regard flange stock as another lumber product in a broad field of lumber products with distinct characteristics and end-uses. We have not found any differences which satisfy any of the *Diversified Products* criteria to the extent that we would treat flange stock as a separate class or kind. The particular construction, strength rating, dimension and end-use of flanges cannot be the sole basis for their treatment as a separate class or kind. If this were the case, the number of separate classes or kinds that the Department would be obliged to create would be too numerous to administer. We note that Tembec has identified a distinct channel of trade (sales to I-beam producers) and manner of advertising (none, since it sells all of its flange stock to I-beam producers).<sup>483</sup> However, we again conclude that this channel of

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<sup>481</sup> See 19 U.S.C. 1671a(b)(1) or 1673a(b)(1) respectively

<sup>482</sup> The petitioners response is to Tembec and Abitibi since Tembec's response represents the views of both themselves and Abitibi. See footnote 8.

<sup>483</sup> See letter from Tembec, May 21, 2001 (Tembec 5/21/01 letter).

trade and this manner of advertising, distinct as they are from most of the dimension lumber, are not so distinct from those of other lumber speciality products.

The Department agrees with petitioners that it was not necessary for every individual product included in the scope to be specifically named as long as the categories of products were clearly defined. In addition, all parties have been given a number of opportunities to inquire and to clarify what is included in the scope and the petitioners have made it clear throughout the proceeding that it was their intention to include flange stock in the scope.

G. *Used Railroad ties*

Anderson Wholesale requests that the Department consult with the U.S. Customs Service (Customs) in order to classify used railroad ties under HTSUS Heading 4401, a heading that falls outside the scope of the instant investigations. Anderson Wholesale states that it believes that used railroad ties are wood, waste, and scrap.

If railroad ties are not excluded from the scope, Anderson requests that they be treated as a separate class or kind of merchandise, based on its *Diversified Products* analysis. Anderson argues that the physical characteristics of used railroad ties are unique from other softwood lumber products. They support this argument by stating that such railroad ties are used and have damaged ends and sides, or are recycled. Anderson further argues that used railroad ties can be made from hardwood and softwood and that there is no way to distinguish such a difference. These ties, argues Anderson, are used for landscaping purposes, almost exclusively and give the consumer a different expectation than that of other softwood lumber. Finally, Anderson argues that used railroad ties cannot be further manufactured, and used ties are sold by auction – a different channel of trade than that of other softwood lumber products.

The petitioners argue that used railroad ties do not pass under a good analysis of the *Diversified Products* criteria. Under the physical characteristics criterion, the petitioners argue that used railroad ties are not unique. They argue that even if used and damaged, such railroad ties are still lumber. For the expectation of the user and for end use, the petitioners state that purchasers of used railroad ties, usually for landscaping purposes, have the same expectations for used railroad ties as they would for other timbers used in landscaping. Last, the petitioners refute the argument that used railroad ties have different channels of trade, arguing that Anderson did not show how the channel of trade differs whatsoever from other landscaping timbers. The petitioners also note that, while Anderson did not make an argument about the marketing of used railroad ties, they are not advertised nor displayed any differently than other landscaping timbers.

Department's Position: We agree with the petitioners. Under no provision of *Diversified Products* are used railroad ties unique enough for the Department to consider them a different class or kind of merchandise. Used railroad ties are similar enough in physical



characteristics, even if damaged, used, or very old, to other softwood lumber products to consider them the same class or kind of merchandise. Even damaged, used, and old softwood lumber products continue to fall under the scope of our investigations. Under the criteria of customer expectations, end use, channel of trade, and marketing; both the record evidence and Anderson fail to demonstrate that used railroad ties are different from other landscaping timbers. Therefore, the Department cannot justify giving a separate class or kind status to such products.

We further find that all railroad ties classified by Customs in categories included in the scope remain in the scope of the investigations.<sup>484</sup>

#### H. *Single Family Home Packages*

In its July 9, 2001, submission Lindal Cedar Homes, Inc. (Lindal) argued that prefabricated home packages are outside the scope of the investigations because (1) they did not fit in the definition of the scope and (2) the prefabricated home packages satisfied the *Diversified Products* criteria.<sup>485</sup> Lindal stated that it made this request because it had been advised by the Customs Service that its home packages were to be classified based on the proper classification for each constituent element in the home package. Consequently, parts of the home packages were covered under HTSUS provisions included within the scope. Lindal argued in its submission of November 14, 2001, that the Department, and not U.S. Customs, makes scope decisions.<sup>486</sup> In a March 15, 2002,

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<sup>484</sup> Anderson also presents several arguments in support of a scope exclusion for used railroad ties. Anderson argues that used railroad ties should be excluded because they were exempt from quotas and fees under the SLA and because new railroad ties were exempt under the SLA. (Anderson Case Brief, March 6, 2002 at 16-21) Regardless of whether these assertions, which the petitioners strongly question, actually were the case, the scope of the current proceedings is not in any way tied to the scope under the now expired SLA. (Petitioners letter, October 23, 2001 at 4-5) Anderson also contends that the petitioners did not intend to include used railroad ties in its petition. (Anderson Case Brief, March 6, 2002 at 24-26) The petitioners state that this is untrue and the Department has found no evidence on the record that would support Anderson's contention. (Petitioners letter, October 23, 2001 at 6) With specific regard to the countervailing duty case, Anderson also suggests that the original manufacture of the used railroad ties may have predated the alleged subsidies because they were produced in the 1950's and 1960's. (Anderson Case Brief, March 6, 2002 at 26) However, the petitioners counter that Canadian subsidies date from the beginning of the 20<sup>th</sup> century. (Petitioners letter, December 6, 2001 at 6) Finally, Anderson claims that used railroad ties should be excluded from the scope of these investigations because they should be reclassified as wood, waste and scrap (HTSUS 4401.30.40) and because they should be consistent with new railroad ties (HTSUS 4406), both of which are outside the scope. (Anderson Case Brief, March 6, 2002 at 14-16, 27) If Anderson believes that the current classification for used railroad ties is inappropriate, it may wish to follow the appropriate procedures in pursuing new rulings from the U.S. Customs Service. To the extent that the product is currently classified under HTSUS 4407.10.00, all used railroad ties are covered under the scope of these investigations. Because the petitioners do not agree to the exclusion of this product and no "overarching" reasons were presented for the exclusion, we determined that used railroad ties remain within the scope of these proceedings.

<sup>485</sup> Letter from Lindal, July 9, 2001.

<sup>486</sup> Letter from Lindal, November 14, 2001.

letter, the company noted that the petitioners had agreed that Lindal's home packages should be excluded and provided proposed exclusion language.<sup>487</sup>

The petitioners argued the following in an earlier submission:

The issue is not whether "prefabricated homes" are within the scope; Petitioner has previously agreed that prefabricated homes which are classified in HTSUS 9406, are not within the scope. The issue here is whether or not Lindal's "packages" are prefabricated homes, *i.e.*, whether they have been properly classified by Customs.<sup>488</sup>

In its March 15, 2002, case brief, the petitioners agreed that single family home packages meeting the criteria proposed by Lindal in its March 15, 2002, letter should be excluded from the scope.<sup>489</sup>

**Department's Position:** We note that Lindal never requested that we consider prefabricated home packages as a separate class or kind of merchandise and provided only scant *Diversified Products* analysis. We agree with the petitioners that prefabricated homes which are classified in HTSUS 9406 are not included in the scope.

Based on agreement of the petitioners, the Department is including in its final determination the exclusion language provided by Lindal for single family home packages.

**Comment 53: Other scope issues**

**A. *Bed-frame kits (also referred to as box-spring frame kits)***

The International Sleep Products Association (ISPA) and Sinclar Enterprises Ltd. (Sinclar) reiterate their request that the exclusion of wooden bed-frame kits, granted in the preliminary determinations in both the antidumping and countervailing duty cases, be expanded to cover both kits imported in bulk form and kits that are individually packaged.<sup>490</sup> They claim that the individual packaging of kits is economically impractical for the mattress industry because it involves increased shipping and manufacturing costs. Allowing kits to be imported in bulk, although on the same carrier, would be more economically efficient. Under ISPA's and Sinclar's proposal, if all components that

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<sup>487</sup> Letter from Lindal, March 15, 2002.

<sup>488</sup> Letter from the petitioners, December 6, 2001 at 8.

<sup>489</sup> Petitioners scope rebuttal at 36.

<sup>490</sup> See letter from ISPA and Sinclar, dated December 3, 2001.

arrive on a given truck entry are destined for the same customer, the U.S. Customs Service (Customs) would consider all the components presented together to determine whether the bed-frame kit exclusion is satisfied. Any other box spring frame components loaded on the same carrier that do not make up a full kit would not benefit from the exclusion.

ISPA and Sinclair also contend that widening the exclusion to include bulk kits would not increase the likelihood of circumvention or impose added administrative burdens on Customs. They claim that slats, which are the components currently in the scope, have only limited alternative applications and that the likelihood of diversion is minimal because of the requirement that higher-value radius cut pieces also be included. They believe that it would be easier for Customs to verify compliance with bulk kits, rather than with individually packaged kits, because of the smaller number of bundles to inspect. As a safeguard against circumvention, ISPA and Sinclair ask that, in line with Customs' treatment of truss and pallet kits, Customs bring this product to the attention of the import specialist for review and verification. They also suggest that the bulk kit producer affix a label to inform downstream purchasers that the product is intended exclusively for consumption in the manufacture of box spring frames and that Customs require, as a condition for entry, that the destination for the qualified components is a bona fide box spring frame or mattress manufacturing plant.

The petitioners respond that, as a preliminary matter, there is no such thing as a "kit" for assembly of another component.<sup>491</sup> Bed frames are simply components used in the manufacture of box springs; they are not finished products themselves and there is no HTSUS subheading for "bed frames." By excluding bed-frame kits from the scope, the Department has provided producers and importers of bed-frame components with an exception that would not necessarily be provided by normal Customs classification practice. As an exception to Customs' practice, this exclusion must be interpreted narrowly in order to serve a meaningful purpose. With regards to the requesters' arguments concerning the additional labor costs and the cost of possible breakage in transit, the petitioners point out that a fractional increase in the price of the components that represent only a small portion of the cost of the finished good would not have harmful effects on the mattress industry.

**Department's Position:** The Department has weighed all of the considerations presented by ISPA and Sinclair. We understand that the requirement of individually wrapped kits imposes additional costs on the industry. However, the type of exclusion proposed by the industry presents some insurmountable problems.

While the idea of bulk kits seems, on its face, fairly straightforward, the proposal contains aspects that give us pause. For instance, the Department is concerned with the

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<sup>491</sup> See petitioners 12/6/01 letter.

implication that shipments may include not only the components necessary for the kits but also additional components. While those components would obviously not be covered by the exclusion, this arrangement adds additional layers of complexity to the administration of the exclusion as proposed by the requesters.

The requesters state that this exclusion would be easily administrable. Information on the record sharply contradicts the respondents. Customs has expressed concern with regard to the implementation of any exclusion concerning bed frame kits and has advised us of specific difficulties that it would encounter in the administration of the exclusion if agreed to by the petitioners and adopted by the Department.<sup>492</sup> Such difficulties are primarily related to a classification of bed-frame kits in the current tariff schedule. Unlike trusses and pallets, Customs does not recognize box frame kits unless they are imported with springs - as essential elements of a box spring "kit." Therefore, under a "kits" exception, Customs does not have a specific tariff number under which to classify the kit. Therefore, the Customs entry form would list only the individual components of the kits, and each component would be classified independently, under different HTSUS subheadings. This presents enforcement problems and data collection problems, since Customs' regulations on kits would not apply. To compound this enforcement problem, there would be no possibility for data collection on these types of kits.

We are aware that these difficulties also affect individually wrapped kits. However, to the extent that the petitioners have stated that such kits are not in the scope of these proceedings, we have granted the exclusion. The petitioners have not agreed to the exclusion of bulk kits. Therefore, we will continue to exclude individually wrapped bed-frame kits as described in the AD Preliminary Determination. We are not granting the exclusion of bulk kits, as proposed by the requesters.

*B. U.S. origin lumber further processed in Canada*

The Government of Quebec (GOQ) argues that U.S.-origin lumber that is minimally processed in Quebec - through drying and planing - is not substantially transformed and is outside the scope of these investigations because the country of origin remains the United States.<sup>493</sup>

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<sup>492</sup> See letter from John Durant, Director, Commercial Rulings Division, to Melissa Skinner, Director, Office VI, dated October 30, 2001.

<sup>493</sup> See letter from GOQ on Scope and Class or Kind Comments in the Antidumping and Countervailing Duty Investigations: Certain Softwood Lumber Products from Canada, dated March 15, 2002. Jones & Jones, L.L.C. (J&J) in a letter dated September 24, 2001, also asked the Department to clarify that lumber manufactured in the United States, exported to Canada for further processing and re-exported to the United States, is not covered by the CVD investigation. J&J argues that only materials exported from Canada to the United States, which benefitted from alleged subsidies bestowed upon the Canadian industry, should be subject to a countervailing duty.

The petitioners respond that a U.S. lumber producer may ship U.S. lumber to Canada for minor processing that does not alter the essential character of the product and bring back to the United States the finished product under subheading 9802 of the HTSUS, which provides for the return of U.S. merchandise with no duty or duty assessed only on the cost or value of the additional minor processing performed abroad.<sup>494</sup> However, the petitioners also recognize that U.S. lumber remanufactured in Canada may or may not be classifiable under 9802, depending on the type of processing that occurs abroad and whether or not commingling of U.S. lumber with Canadian lumber occurs during the processing. Accordingly, the petitioners agree that U.S. lumber undergoing only minor processing in Canada, as provided for under HTSUS 9802, and with proper documentation of the lumber's origin (as determined by Customs) is not subject to this investigation.

Department's Position: Since the petitioners have agreed to this exclusion, the Department will amend the scope language accordingly. The following language will be added to the list of products excluded from the AD and the CVD investigations:

U.S. lumber shipped to Canada for minor processing and imported into the United States is excluded from the scope of the CVD investigation if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to Customs' satisfaction that the lumber is of U. S. origin.

C. *Pallet and Truss Kits and Stringers*

The petitioners state that the Department should clarify its language on scope exclusions, with regard to truss kits, pallet kits, and pallet stringers.<sup>495</sup>

With regard to pallet and truss kits, the QLMA, Tembec, OFIA, and OLMA argue that the petitioners' assertion that such kits must be shipped with all kit components in the same railcar or truck is unadministrable. They also argue against the petitioners' request to impose size restrictions on stringers, on the grounds that there is no basis for such restrictions under the relevant HTSUS customs category.

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<sup>494</sup> See petitioners rebuttal scope brief at 36.

<sup>495</sup> See *Id.* at 5-10. See also petitioners scope brief at 3.

Department's Position: We agree with the QLMA, Tembec, OFIA, and OLMA that the scope exclusion language, as it is currently formulated in our scope exclusion list, is administrable for truss kits, pallet kits, and pallet stringers.<sup>496</sup>

*D. Certain further manufactured products*

In its March 15, 2002, brief, the QLMA requested scope clarification regarding the following softwood lumber products: 1) angle-cut for truss components; 2) I-joists for beams and their components; 3) drilled and notched lumber; 4) window, door and edge glued components; 5) wooden pallet components; 6) square-cut end bed-frame components; and 7) fence components. The QLMA claims that "none of these products {was} intended by the petitioner to be included in the investigations" and that "{i}nclusion of these products would render any resulting order unadministrable" because it would include nearly all further manufactured softwood lumber products.<sup>497</sup>

Department's Position: All of these products are within the scope except where they have already been specifically excluded as described in comment 57 of this memorandum. As regards the questions raised by the QLMA concerning the angle-cut trusses and window and door components, see the Department's specific discussion regarding these products in comment 57.

**Comment 54: Industry Support**

Several respondents and interested parties question the petitioners' standing with respect to certain species of softwood lumber and certain specialized products for which they have requested findings of separate classes or kinds of merchandise.

Abitibi states that no valid petition was ever filed against imports of square-end bed frame components because the petitioners do not purport to represent the domestic producers of square-end bed frame components and therefore lack the standing required for an investigation to be initiated against this product.<sup>498</sup>

Tembec questions whether the petitioners have standing with respect to flange stock and whether the petition was "filed on behalf of the domestic industry."<sup>499</sup> Tembec argues that the petitioners

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<sup>496</sup> See Memorandum to Bernard T. Carreau from Maria MacKay, Gayle Longest, David Layton on Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada (October 30, 2001).

<sup>497</sup> See QLMA scope brief at 3.

<sup>498</sup> See Abitibi scope brief at 8.

<sup>499</sup> See Tembec scope brief at 10 and fn 11.



fail to meet the definition of an interested party for flange stock because their members do not engage in the manufacture, production, or wholesale in the United States of a domestic like product of Canadian flange stock.<sup>500</sup> Tembec concludes that, because flange stock represents a different class or kind of merchandise, the lack of allegations in the petition specifically against this product, combined with a lack of record evidence establishing the petitioners as an interested party for the flange stock industry, means that the petition does not meet the requirements. Hence, investigations should not have been initiated against flange stock.

Tembec, along with OLMA and OFIA, also contends that because EWP is a separate class or kind of merchandise, in order for the petitions to be valid with respect to this product, the petitioners must show that the petitions were filed on behalf of the domestic EWP industry.<sup>501</sup> As the petitions fail to make any mention of EWP, they were clearly not filed on behalf of the domestic industry and, therefore, the investigations with respect to EWP should be terminated.<sup>502</sup>

In response to all of these comments, the petitioners claim that there is a single lumber industry with each of the above mentioned species or products merely parts of the whole. With the required support of the domestic lumber industry, the petitioners assert that they have standing with respect to all of the subject merchandise. The petitioners point out that according to Congress, "standing cannot be revisited at this point in the litigation."<sup>503</sup>

Department's Position: The Department has determined that square-end bed frame components, flange stock, and EWP are all within the scope of these investigations and part of a single class or kind of merchandise. Therefore, the question of industry support and standing based upon requested findings of separate classes or kinds is moot. At the time of initiation, the Department found that the margins and industry support established by the petitions were adequate for the single class or kind of softwood lumber products. The Department is prevented under the Act from reconsidering its determination on industry support once an investigation has been initiated.<sup>504</sup> Therefore, the Department maintains that the petitioners have sufficient domestic industry support in these proceedings.

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<sup>500</sup> See *Id.* at 10-12.

<sup>501</sup> See *Id.* At 10 and OFIA/OLMA scope brief at 8.

<sup>502</sup> See *Id.*

<sup>503</sup> See *Id.*

<sup>504</sup> See section 732(c)(4)(E) of the Act.

**Comment 55:** *Whether including certain products within the softwood lumber category is harmful to softwood lumber industry in the United States*

Weyerhaeuser and USRCMA argue that the inclusion of WRC within the softwood lumber category covered by the investigations will have damaging consequences for WRC remanufacturers and sellers in the United States and will harm the U.S. softwood lumber industry in general. They highlight two consequences in particular if WRC continues to be grouped with other softwood lumber as a single class or kind of merchandise in these investigations and the Department imposes duties on this merchandise as a result of the investigations. First, the requesters contend that duties on WRC affect the availability of WRC in the United States to the extent that the market will shift from WRC to non-wood substitutes such as composites and plastics because wood substitutes for WRC do not exist. Second, they predict that many of the remaining jobs in WRC remanufacturing, retail and distribution channels will shift from the United States to Canada. They note that well over a hundred companies have written to the Department about these possible consequences, asking for an exclusion of WRC. The requesters maintain that absent the Canadian supplies of WRC, these U.S. companies would not be able to obtain enough raw material to survive. The requesters assert that if the continuum theory were correct, these companies would not care about the availability of Canadian WRC because they could simply substitute another softwood as their input.

Tebb argues that the inclusion of shop and better lumber in the scope of the investigations actually injures United States remanufacturers because shop and better lumber is not produced in the U.S. in "commercially needed" quantities. Tebb argues that the Act is supposed to aid the U.S. industries, not hurt them. Finally, Tebb states that besides having adverse effects on U.S. remanufacturers, leaving shop and better lumber within the scope of these investigations would give Canadian companies a large price advantage, allowing those companies to steal away customers from U.S. companies.

The petitioners dispute Tebb's suggestion that since its specific types of shop or better lumber are not produced in the United State their import does not injure the U.S. softwood lumber industry. They assert that high-quality old growth lumber from Canada competes directly with other types of softwood lumber produced in the United States. Second, the petitioners assert that there is no evidence on the record that Tebb manufactures products that have been excluded such as trusses, I-joist beams, complete window frames, or furniture.

**Department's Position:** In making the above arguments concerning injury, the requesters are confusing the functions of the Department of Commerce and the ITC. When the Department considers the universe of softwood lumber products included in the scope of the investigations, it is looking at products produced in Canada and not at possible substitutes produced in the United States. While we are well aware of the concerns of U.S. businesses that have historically depended on supplies of certain softwood products from Canada, the Department's function in its investigations is to determine whether these imports, which are included in the scope defined by the U.S. industry seeking relief, have been unfairly subsidized or sold at less than fair value.

Issues of which like products in the United States are actually being injured by these imports are the domain of the ITC injury investigation.

We are consequently not in a position to base either our scope exclusion decision or our separate class or kind decision on a consideration of the potential consequences that an imposition of duty on Canadian WRC and shop and better would have on U.S. users of WRC and shop and better. The ITC does, at times, consider the issue of limited availability of a given product in its injury determinations.

As an additional consideration, we reiterate that even if the Department were to find that WRC or shop and better constituted a separate class or kind, our practice would require that these products remain subject to an investigation, albeit a separate investigation. Even with a separate investigation, duties could be imposed on WRC and shop and better if dumping or countervailable subsidies were found. Therefore, establishing WRC or shop and better as a separate class or kind of merchandise does not necessarily resolve the issue of WRC and shop and better availability in the United States as it is perceived by the requesters.

Also regarding the possibility that imposition of duties might injuriously limit the U.S. supply of WRC and shop and better, we refer to our discussion in the *March 12 Scope Memo* concerning the steps that the Department has taken to insure that product coverage does not include anything that the parties seeking relief did not intend to include.<sup>505</sup>

**Comment 56: Remanufactured Products**

The Government of Canada (GOC), the Canadian Provinces and Territories, and Canadian industry associations argue that the Department must exclude remanufactured products from the scope of the investigations because it is not sold at less than fair value in the U.S.<sup>506</sup> These parties further argue that the petitioners' allegations encompassed only Eastern and Western spruce pine fir dimensional lumber produced by sawmills, leaving the export price, normal value, and dumping margins in the petition as calculations that exclude remanufactured products. Last, these parties state that sawmills and remanufacturers have such differences in size and annual shipment value that the petitioners' calculations do not represent remanufactured products.<sup>507</sup>

**Department's Position:** Under the Department's regulations 19 CFR 351.225(k), the Department must first consider "{t}he descriptions of the merchandise contained in the petition, the initial

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<sup>505</sup> *March 12 Scope Memo* at 4.

<sup>506</sup> See case brief regarding scope and class or kind from The Government of Canada, the Canadian Provinces and Territories, and Canadian industry associations (March 15, 2002) at 8.

<sup>507</sup> See *Id.* at 10-11.

investigation {s} and the determinations of the Secretary . . . and the Commission.”<sup>508</sup> Only “{w}hen the above criteria are not dispositive, the {Department} will further consider”<sup>509</sup> other information. We initiated the dumping investigation based on our determination that the petition was adequate as required by 19 CFR 351.202(b) and contained the factual information describing the “subject merchandise that defines the requested scope of the investigation.”<sup>510</sup> The regulations further require that the petition’s description of subject merchandise contain the technical characteristics and uses of the merchandise and U.S. tariff classification number.<sup>511</sup> In these cases, we believe that the information contained in the petitions describing all subject merchandise within the scope, including characteristics and uses of the merchandise, whose descriptions included remanufactured products, was sufficient to initiate these investigations. Therefore, we maintain that remanufactured products, falling under the scope of the investigations in the petitions, should remain under the scope in these investigations.

**Comment 57: Scope exclusion requests**

This comment addresses the remaining scope exclusion requests raised by numerous interested parties in the course of these proceedings. In the preliminary countervailing duty and antidumping determinations and in a subsequent amended preliminary determination, we addressed a number of scope exclusion requests and provided a number of scope clarifications.<sup>512</sup> On March 12, 2002, we issued a memorandum preliminarily determining that certain lumber products for which a class or kind determination had been requested, do not constitute a separate class or kind and are included under the scope of these investigations.<sup>513</sup> This memorandum covers the requests for

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<sup>508</sup> 19 C.F.R. 351.255(k). The petition also met the petition requirements under 19 C.F.R. 351.202.

<sup>509</sup> *Id.*

<sup>510</sup> See 19 C.F.R. 351.202(b)(5).

<sup>511</sup> See *Id.*

<sup>512</sup> See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada (CVD Prelim)*, 66 FR 43186-43188 (August 17, 2001); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada (AD Prelim)*, 66 FR 56062, 56078 (November 6, 2001); and *Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada; Amendment to Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada (Amended Prelim)*, 67 FR 6230 (February 11, 2002); *Notice of Correction to Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada; Amendment to Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada*, 67 FR 8227 (February 22, 2002).

<sup>513</sup> See *March 12 Scope Memo*.



scope clarifications or scope exclusions for products which were not included in prior notices and decision memoranda. In many instances, we received multiple requests for the exclusion of the same product. Our response takes into account the information and arguments presented by all parties, although not all submissions may be specifically cited.

### **Overview of Scope Requests**

We received several requests for exclusion of certain softwood lumber products from the countervailing duty investigation based on the source of the lumber or of the logs from which the lumber was manufactured:

1. Maritime lumber produced from Maritime logs, further worked in Quebec from Mobilier Rustique.
2. Lumber produced from timber harvested in First Nations territory from Dakwakada Forest Products.
3. Lumber produced from timber harvested in aboriginal lands of the nine First Nations of the Meadow Lake Tribal Council from Norsask Forest Products Inc.
4. Used railroad ties from Cando Contracting.
5. Recycled timber from Last Mountain Timber.

In addition, various interested parties requested that the products in the following list be excluded from the scope of both the antidumping and countervailing duty investigations. To facilitate the analysis, we have grouped the products under the following three headings:

#### **A. Generic lumber products**

1. Hemlock clear cut stock from Bridgeside Higa Forest Ind., Ltd.
2. Industrial grade lumber from Bright Wood Corp.
3. Treated lumber from Weldwood of Canada, Inc.
4. Dimension lumber (less than 3' in length) from Weldwood of Canada, Inc.
5. Timbers from Weldwood of Canada, Inc.
6. Boards from Weldwood of Canada, Inc.
7. Turning blanks from Sundance Forest Industries

#### **B. Carpentry construction products**

1. 2"x3" or 2"x4" lumber of finger-jointed Eastern Canadian black spruce - machine stress rating 1650 and above 2"x4" or 2"x6" lumber, machine stress rating 1650 and above from Louisiana Pacific Corp.
2. Door frame and sill parts from Alberta Spruce Industries, Ltd.
3. Window sills and frames from Sundance Forest Industries
4. Door jacks from Weldwood of Canada, Ltd.
5. Triple corners from Weldwood of Canada, Ltd.
6. Finger-jointed blocks from Weldwood of Canada, Ltd.
7. Angle-cut lumber for trusses and sheds from Alliance Forest Products Ind., Ltd.



8. Garage door core from Bridgeside Higa Forest Ind., Ltd.
9. Laminating blanks from Sundance Forest Industries
10. Edge glue blanks from Sundance Forest Industries
11. Stair part turning squares from Cahan Wood Products
12. 3/4" and 5/16" interior tongue and grooved wall claddings from Greenwood Forest Products, Ltd.
13. Fascia and trim boards from Sundance Forest Industries
14. Real Trim (TM) exterior molding and trim board system from Woodtone
15. Flooring and Siding from Weldwood of Canada, Ltd.
16. Guard rails from Weldwood of Canada, Ltd.
17. Cedar shingle blocks from Shakertown 1992 Inc.

**C. Components/parts of finished products**

1. Furniture parts and furniture blanks from Alberta Spruce Industries, Ltd. and Sundance Forest Industries
2. Display fixtures parts from Alberta Spruce Industries, Ltd.
3. Recreational vehicle product from Bridgeside Higa Forest Ind., Ltd.
4. Refrigerator stock from Bridgeside Higa Forest Ind., Ltd.
5. Trellis stock from Bridgeside Higa Forest Ind., Ltd.
6. Fencing and fence parts from Sundance Forest Industries
7. Turb-o-Web Truss Webs from Tembec Inc.
8. Cable reel staves from Universal Reel & Recycling Inc.
9. Box parts, crating parts, and vegetable box components from Sundance Forest Industries and Weldwood of Canada, Ltd.

**Analysis**

As a general principle, the Department has the authority to define or clarify the scope of an investigation.<sup>514</sup> The Department may use this authority to establish, when appropriate, separate classes or kinds of merchandise under the scope, or to modify the scope, as defined by the petitioner, when the resulting order would not be administrable. However, the Department cannot use its authority in a manner that would thwart the statutory mandate to provide the relief requested in the petition. Therefore, absent an "overarching reason to modify" the scope in the petition, the Department generally accepts the scope defined in the petition.

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<sup>514</sup> See March 12 Scope Memo.

*Requests for exclusion from the scope of the countervailing duty investigation based on input sourcing*

1. *Maritime lumber from Maritime logs, further processed in Quebec*

Mobilier Rustique purchases softwood lumber from the Maritime Provinces and further processes it in Quebec by planing, cutting to length, cutting lengthwise and/or performing all processes.<sup>515</sup> Mobilier Rustique is asking the Department to determine that the resulting lumber products are excluded from the scope.

The petitioners respond that once the lumber is processed in Quebec, it becomes a product of Quebec.<sup>516</sup> The petitioners point out that the extent of the processing that Mobilier Rustique performs appears to be quite extensive and that it is virtually impossible to determine whether a specific shipment of softwood lumber from a particular company consists only of lumber produced from Maritimes-origin wood, unless that company processes Maritimes-origin wood exclusively. Accordingly, the petitioners conclude that this request should be treated as a company exclusion request, not as a scope request.

**Department's Position:** Once the lumber is processed in a non-Maritimes province, it becomes indistinguishable from lumber of other origin and may benefit from subsidies bestowed on the mill. To the extent that a company processing the Maritimes-origin lumber can demonstrate that it does not receive any other subsidies, the company can be excluded from the CVD investigation and the Maritimes-origin lumber processed in an unsubsidized mill outside the Maritime provinces is not subject to CVD duties.

2. *Lumber produced from timber harvested in First Nations territory and*
3. *Lumber produced from timber harvested in aboriginal lands of the nine First Nations of the Meadow Lake Tribal Council*

Dakwakada Forest Products Inc. (Dakwakada) asks for the exclusion of products manufactured from white spruce harvested in First Nations territory, owned by the Champagne Aishihik First Nations in the Yukon Territory (which also owns Dakwakada).<sup>517</sup> No specific reason is provided for the request. The petitioners respond that spruce is covered in the scope and that softwood lumber products in the Yukon are no different from products from other regions.<sup>518</sup> Therefore, in the petitioners' view, the request should be denied.

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<sup>515</sup> See letter from Deringer Logistics Consulting Group (December 6, 2001).

<sup>516</sup> See petitioners' letter, December 20, 2001.

<sup>517</sup> See letter from Dakwakada Forest Products, dated June 4, 2001.

<sup>518</sup> See petitioners' letter, June 27, 2001, at 68.

Norsask Forest Products Inc. and the Meadow Lake Tribal Council (MLTC) of Northern Saskatchewan (Norsask) request that softwood lumber products exported by NorSask be excluded from these investigations because no subsidy may be found to exist with respect to timber harvested from aboriginal lands, which supply 90 percent of the input to Norsask.<sup>519</sup> The petitioners assert that this lumber is covered by the scope, because the general physical requirements, end use, expectations of ultimate purchasers, channels of trade, and manner of advertisement are the same as those for softwood lumber products produced by non-First Nations Aboriginal communities.<sup>520</sup>

Department's Position: In the CVD investigation, we have not examined the status of the aboriginal lands with respect to subsidization. Therefore, the Department has no basis to make a different finding with regard to potential subsidization affecting the products manufactured by Dakwakada and Norsask. Therefore, based on the information on the record, we are not granting the exclusion of products manufactured from timber harvested on aboriginal lands.

5. *Used railroad ties*
6. *Recycled Timber*

Cando Contracting Ltd. (Cando) asks for the exclusion of railway ties which it reclaims from abandoned track throughout Canada.<sup>521</sup> The ties are then used in other short lines or sold to retail outlets for posts and landscape material. They are generally 30 to 60 years old. Last Mountain Timber asks for the exclusion of softwood timbers obtained from dismantling old grain elevators, barns, and warehouses.<sup>522</sup> The timbers are de-nailed and can be either sold as is or sawn into planks. The appearance of this wood is quite different from lumber, but it can be used in the same manner. Typically, this type of wood is used in higher-end home markets. It is currently classified under HTSUS 4407.10. The reason for the exclusion of both products would be neither of them can have benefitted from stumpage fees, the railroad ties because of their age, and the recycled timber because the source of the wood is not the Canadian public forest.

The petitioners cite to a Customs ruling which classifies used railroad ties, if not further manufactured, under HTSUS 4407, as sawn pieces of lumber used principally as landscape timbers.<sup>523</sup> Given the classification, the petitioners claim that the product is covered under the scope.

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<sup>519</sup> See letter from Shibley Righton dated May 18, 2001.

<sup>520</sup> See petitioners' letter, June 27, 2001, at 48.

<sup>521</sup> See letter by Cando Contracting Ltd. to the Department, dated May 17, 2001.

<sup>522</sup> See letter from Deringer Logistic Consulting Group, dated November 29, 2001.

<sup>523</sup> See petitioners' letter, June 8, 2001, at 6.

On the recycled wood, the petitioners claim that the fact that Customs classifies this type of wood under HTSUS 4407 puts the product squarely within the scope.<sup>524</sup> The petitioners also comment that appearance does not take recycled wood outside the scope of these investigations and that Canadian subsidies date from the beginning of the 20<sup>th</sup> Century. Therefore, it is not clear that the timber and the railway ties benefitted from them.

Department's Position: The scope of these investigations includes all products classified under HTSUS 4407.1000. The petitioners do not agree to the exclusion of these products. There are no "overarching" reasons for the exclusion. Therefore, we are not granting these exclusions.

*Requests for product exclusion from the scope of the AD and CVD investigations*

**A. Generic Lumber Products**

**1. Hemlock clear cut stock**

Bridgeside Higa Forest Limited Inc. (Bridgeside) describes this product as "a high grade product, species specific," and tight grained.<sup>525</sup> It may be either cut to length or in blocks for finger joining and it is used in the production of high-end doors. Bridgeside requests its exclusion from the scope on the following grounds: 1) the volume of imports is low; 2) domestic supply is limited and fully utilized; 3) selling price is higher than the price of structural lumber; 4) because of its grading characteristics, is not interchangeable with the domestic stock. Bridgeside did not provide a Customs classification.

The petitioners respond that the scope of the petitions covers all softwood lumber, regardless of the grade, size, or use of the lumber; hemlock is covered under HTSUS 4407.10.00.64.<sup>526</sup> The petitioners also state that significant quantities of hemlock are produced in the United States, although, in their view, it is not necessary for the U.S. industry to be able to supply 100 percent of the market demand for this product, since lumber products of different species and grades compete with each other.

Department's Position: Hemlock (rough and other) is classified under 4407.1000. The scope of these investigations includes all products classified under this subheading. The petitioners do not agree to the exclusion of this product. There are no "overarching" reasons for the exclusion. Therefore, we are not granting the exclusion.

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<sup>524</sup> See petitioners' letter, December 6, 2001, at 6.

<sup>525</sup> See letter (undated) received by the Department on May 21, 2001; and letter dated August 16, 2001.

<sup>526</sup> See petitioners' letter, June 27, 2001 at 65, October 1, 2001 at 16.

2. *Industrial grade lumber*
3. *Treated lumber*
4. *Dimension lumber (less than 3' in length)*

Industrial grade lumber is defined as lumber graded as shop or molding-grade and used by remanufacturers in the production of moldings, millwork, doors, door frames and door components, window components, staircase components, furniture components, and interior and exterior trim. The Bright Wood Corporation (BWC), the requester, states that because of physical differences, industrial lumber cannot be substituted for dimension, structural, and framing grade lumber.<sup>527</sup> BWC asks for this exclusion for the following reasons: 1) the volume of imports is very small; 2) there is limited domestic availability;<sup>528</sup> 3) prices are higher than those of structural and framing products; 4) it is the raw material used to produce many of BWC's products, which are exempted from the investigations; a tariff on industrial lumber favors BWC's Canadian competitors.

The exclusion of treated lumber and of dimension lumber was requested by Weldwood Canada Inc. (Weldwood).<sup>529</sup> Weldwood did not provide a physical description of the products. With regard to treated lumber, Weldwood only quoted a sentence from a letter from the petitioners stating that treated lumber is significantly different from untreated lumber. With regard to dimension lumber, the only physical characteristic provided by Weldwood is the 3-foot maximum length. The reason provided in support of these requests is that these products are highly specialized and that it constitutes trivial export volumes.

The petitioners respond that treated lumber is covered under HTSUS 4407 and that dimension lumber in lengths of 3' or less is still dimension lumber, which is also expressly included in the scope.<sup>530</sup> The petitioners claim that the Department cannot exclude a product based on length limitations. The petitioners also clarify that the letter cited by Weldwood was related to reporting of sales and cost information and not scope coverage.

**Department's Position:** The petitioners have repeatedly stated that grade and price are not factors in determining whether or not a specific product is covered under the scope. Furthermore, treated lumber is classified under HTSUS 4407.1000, and dimension lumber, regardless of length, is also in the scope. The petitioners do not agree to the exclusion of these products. There are no "overarching" reasons for any of these exclusions. Therefore, we are not granting these exclusions.

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<sup>527</sup> See letter by the Brightwood Corporation dated November 30, 2001.

<sup>528</sup> BWI claims that only "after the antidumping ruling was announced, one domestic supplier offered to produce a small volume at 20% above the prevailing price." See BWI letter, November 30, 2001.

<sup>529</sup> See Weldwood letters, May 21, 2001 and August 17, 2001.

<sup>530</sup> See petitioners' letter, June 27, 2001, at 36 and 44.



5. *Timbers*
6. *Boards*

Weldwood describes timbers as "lumber pieces that are at least 5" in their smallest dimension, also classified as beams, stringers, girders, etc."<sup>531</sup> Boards are described as lumber that is 1" in nominal thickness or less. No support for these requests is provided, except for a generic statement that this is a specialized product and import volumes are minimal.

The petitioners state that timbers are simply thicker pieces of softwood lumber.<sup>532</sup> Both timbers and boards, 1" or less nominal thickness but greater than 6 mm in thickness, are classified under heading HTSUS 4407. Both products are included in the scope.

Department's Position: The petitioners state that this product is classified under HTSUS 4407.1000 (the requester provided no tariff classification). The scope of these investigations includes all products classified under HTSUS 4407.1000. The petitioners do not agree to the exclusion of this product. There are no "overarching" reasons for the exclusion. Therefore, we are not granting the exclusion.

7. *Turning blanks*

Sundance Forest Industries Ltd. (Sundance) requests that turning blanks, classified under HTSUS 4407, be excluded from the scope of these investigations.<sup>533</sup> Sundance manufactures these products in "varying degrees" of finished state and requests that the Department exclude all rough, semi-finished and finished products. The petitioners point out that this product is not adequately described for the Department to make a determination.<sup>534</sup> Based on the information on the record, the petitioners assert that this product is a piece of softwood lumber that may be turned. According to the petitioners, "turning blanks," are clearly within the scope of these investigations.

Department's Position: The scope of these investigations includes all products classified under this HTS subheading. The petitioners do not agree to the exclusion of this product. There are no "overarching" reasons for the exclusion. Therefore, we are not granting the exclusion.

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<sup>531</sup> See Weldwood letter, May 21, 2001, at 3.

<sup>532</sup> See petitioners' letter, June 27, 2001, at 38.

<sup>533</sup> See letter from Sundance Forest Industries, Ltd., May 29, 2001.

<sup>534</sup> See petitioners' letter, June 27, 2001, at 76.

**B. Carpentry construction products**

1. *2"x3" or 2"x4" lumber of finger-jointed Eastern Canadian black spruce - machine stress rating 1650 and above and 2"x4" or 2"x6" lumber, machine stress rating 1650 and above*

Louisiana Pacific Corp. (Louisiana Pacific) imports these products (two types of flange stock) to manufacture structural I-joists.<sup>535</sup> The reason for requesting the exclusion is that there are no domestic manufacturers of the first product and only limited domestic availability of the second.

The petitioners respond that these products appear to be only a particular size of finger jointed and machine-stress-rated lumber, which is included in the scope.<sup>536</sup> They also point out that supply shortage is not a basis for exclusion: There is no statutory language requiring the Department to consider domestic availability when ruling on a scope exclusion request, nor is it necessary that domestic producers be able to meet 100 percent of the demand for a particular product in order to obtain a remedy for unfair trade. Furthermore, the requesters failed to demonstrate that domestic producers cannot provide these products and that domestic substitutes are inadequate or unavailable. The petitioners claim that the number of U.S. producers is higher than the one cited by the requester, that if the market permitted it, MSR capacity could be added, and that some substitutability may be possible with high-strength domestic products, such as Douglas fir and Southern yellow pine.

Department's Position: The Department finds that finger-jointed flange stock is in the scope and does not constitute a separate class or kind with respect to all other softwood lumber products.<sup>537</sup> The petitioners do not agree to the exclusion of finger-jointed flange stock from the scope. This requester did not present any "overarching" reason to consider its exclusion from the scope. Therefore, we are not granting this exclusion.

2. *Door frame and sill parts*
3. *Window sills and frames*

Alberta Spruce Industries, Ltd. (Alberta) and Sundance request that door sills and frames be excluded from the scope of these investigations.<sup>538</sup> Both companies claim that these products are classified under HTS 4418.20.80.60. Alberta clarifies that the company supplies ready-to-assemble frame parts in specified length ratios to produce complete

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<sup>535</sup> See Louisiana Pacific Corporation letters of May 21 and July 3, 2001.

<sup>536</sup> See petitioners' letters, June 27, 2001, at 49-50 and July 17, 2001, at 3-4.

<sup>537</sup> See Comment 52, Class or Kind of Products in this memo.

<sup>538</sup> See Letter from Alberta Spruce Industries, Ltd. dated May 21, 2001. See also Letter from Sundance Forest Industries, Ltd. dated May 29, 2001.

frames. These frames are then assembled on site with the use of metal connector hardware. Alberta also supplies wood door sill cores that are ready to receive a plastic or aluminum extruded sill cap. Sundance does not provide a physical description of this product.

Additionally, Sundance requests that window sills and frames, also classified under HTS 4418.20, be excluded from the scope.<sup>539</sup> With regards to both products, Sundance states that it produces these products in "varying degrees" of finished state and requests that the Department exclude all rough, semi-finished, and finished products.

The petitioners respond that properly classified and assembled window and door frames are outside the scope of these investigations, but that lumber components or frame stock is within the scope.<sup>540</sup> The petitioners explain that softwood lumber components that may be used to make a window sill or frame are within the scope of these investigations.

Department's Position: In the CVD Prelim the Department explicitly stated that properly classified complete door frames and window frames are excluded from the scope. With respect to components, the Department found that window, door, and edge-glued components are within the scope and that they do not constitute a separate class or kind of softwood lumber products.<sup>541</sup> The petitioners do not agree to the exclusion of these products from the scope. There are no "overarching" reasons for exclusion. Therefore, we are not granting the exclusion.

4. *Door jacks*
5. *Triple corners*
6. *Finger-joint blocks*

Weldwood asks for the exclusion of door jacks, triple corners, and finger-joint blocks. Door jacks are pre-manufactured components used in residential construction for framing door openings; they are manufactured by laminating two pieces of 2"x4" approximately 7' and 8' in length which are then precision-end trimmed to match the length of the wall studs.<sup>542</sup> Triple corners are pre-manufactured components used in residential construction for framing the corner that joins two walls of a building; they are produced from three pieces of 2"x4" and trimmed to the exact length of the wall studs. Finger-joint blocks are produced from planer mill trim ends; they are defect trimmed, sorted, and graded, are 8" to 24" long and are used in the manufacture of finger-jointed studs and dimension lumber. Weldwood claims that these products are covered under HTSUS 4418.90.4090. The

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<sup>539</sup> Letter from Sundance Forest Industries, Ltd. dated May 29, 2001.

<sup>540</sup> See Petitioners' letter, June 27, 2001, at 69 and 71, and October 1, 2001, at 16.

<sup>541</sup> See comment 53 of this memorandum.

<sup>542</sup> See Weldwood letter, May 21, 2001.

reason for the exclusion would be due to the fact that these products are highly specialized and constitute trivial export volumes.

The petitioners point out there is no corroboration from Customs on the classification presented by the requester.<sup>543</sup> The petitioners also add that it is unclear that there is commercial demand for door jacks and triple corners, because door framing and corner framing is generally done on site. While pre-manufactured housing might be an exception, the requester did not indicate that this is where the products will be used. Concerning finger-joint blocks, the petitioners state that these blocks are only short pieces of dimension lumber used to make finger-jointed lumber, which is expressly included in the scope.

Department's Position: Door jacks and triple corners are permanently assembled products, which are not covered under the scope of these investigations. Generally, they would be classified under HTSUS 4418.90.40.40 or 4418.90.40.90, as stated by the requester. While we understand the concern of the petitioners with regard to potential loopholes, the drawings of these two products show that the assembly of door jacks and triple corners is fairly elaborate and would not lend itself to easy separation of the components without damage to the parts. On the other hand, we agree with the petitioners that finger-jointed blocks are dimension lumber and are included under the scope. Therefore, we are not granting this exclusion.

7. *Angle-cut lumber for trusses and sheds*

Alliance Forest Products Inc. (Alliance) requests an exclusion from the scope of these investigations for angle-cut lumber for trusses and sheds.<sup>544</sup> Alliance describes these products as angle-cut roof truss components and boards with one or both ends cut at an angle other than 90 degrees, used to construct the side walls and roofing of sheds. Alliance provides Customs rulings stating that both products are classifiable under 4418.90.40.90. The requester also points out that both products were not covered by the Softwood Lumber Agreement.

The petitioners challenge Alliance's assertion that Customs "consistently classified such angle-cut roof truss components" under HTSUS 4418.<sup>545</sup> The petitioners maintain that Customs issued specific rulings regarding unassembled wood trusses classified under HTSUS 4418, applicable only if the trusses met specific requirements. The petitioners further assert that Alliance's written description and drawings of its products do not conform to an industry standard definition for a truss, and that these products do not appear to be "shed kits." On that basis, the petitioners conclude that Alliance's angle-cut

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<sup>543</sup> See Petitioners' letter, June 27, 2001 at 39-40, 43 and September 13, 2001, at 19-20.

<sup>544</sup> See letters from Alliance Forest Products Inc., May 21, 2001, at 5-6 and August 17, 2001, at 2-3.

<sup>545</sup> See petitioners' letter, June 27, 2001, at 30 and September 13, 2001, at 13.

lumber does not meet the requirement of being a component of a specific truss; it is just generic softwood lumber which is covered by the scope of these investigations.

Department's Position: The Department preliminarily determined that trusses and truss kits, properly classified under HTSUS 4418.90, are excluded from the scope (*See AD Prelim*). With regard to truss components, the Department stated in its Amended Prelim that truss components are covered by these investigations and added 4418.90.4090 to the list of HTSUS subheadings under which truss components may be classified. The requester has provided no new facts that would require the Department to revisit its prior determinations.

With regard to angle cut lumber which may not be truss components, angle cut lumber is specifically mentioned in the petitions as being included in the scope. The petitioners do not agree to the exclusion of angle cut lumber. This requester did not present any "overarching" reason to consider the exclusion of angle cut lumber from the scope. Therefore, we are not granting the exclusion of angle cut lumber for trusses and sheds.

8. *Garage door core*
9. *Laminating blanks*
10. *Edge glue blanks*

Bridgeside requests the exclusion of garage door core, described as "finger jointed stock, machined to very tight tolerances" and produced to customer's specifications.<sup>546</sup> This product is designated as an industrial component which is shipped to a manufacturer to be assembled into garage door panels. Bridgeside states that the HTSUS classification is 4407. Bridgeside requests its exclusion from the scope on the following grounds: 1) the volume of imports is low; 2) domestic supply is limited; 3) selling price is higher than the price of structural lumber; 4) due to its grading characteristics, is not interchangeable with the domestic stock; the only alternate input supply for this product is from South America. The petitioners respond that finger-jointed lumber is within the scope of these investigations.<sup>547</sup>

Sundance requests the exclusion of laminating blanks and edge glue blanks, but did not provide a description of these products.<sup>548</sup> It provides 4407 as the HTSUS classification. The requester adds that the product is sold in varying degrees of finished state and asks for the exclusion of rough, semifinished, and finished products. The petitioners respond that, based on the information provided, "laminating blanks" are simply lumber boards

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<sup>546</sup> See letters from Bridgeside Higa dated May 21, 2001 and September 10, 2001.

<sup>547</sup> See petitioners' letter, June 27, 2001, at 64 and October 1, 2001 at page 16.

<sup>548</sup> See letter from Sundance Forest Industries and SunPlus Specialty Wood undated (received by the Department on May 29, 2001).



used for particular applications and "edge glue blanks" are simply lumber used for manufacturing edge-glued lumber.<sup>549</sup> Both products are clearly within the scope.

Department's Position: The scope of these investigations includes all products classified under HTSUS category 4407. The petitioners do not agree to the exclusion of these products. There are no "overarching" reasons for the exclusion. Therefore, we are not granting the exclusion of these products.

11. *Stair part turning squares*

Cahan Wood Products Ltd. (Cahan) states that this product is an industry-specific item that is produced in a range of restricted sizes due to the limitations imposed by local building codes, which require that stair systems be produced to a certain height.<sup>550</sup> Stair-part turning squares are kiln-dried clear Western hemlock molded smooth on all four faces, with square edges or 1/8" radius eased edges, depending on customer specifications. The product is precision-end trimmed to designated sizes which are packaged by size and length.

The petitioners respond that Cahan's turning squares are just small square pieces of softwood lumber in lengths ranging from 31" to 42" without defects, that are likely to be used to manufacture stair balusters.<sup>551</sup> The petitioners assert that these products are stair-part stock, a type of softwood lumber product that is included the scope of these investigations

Department's Position: Based on the information on record, we accept the petitioners' assessment that this product appears to be stair-part stock and would be classified under HTSUS 4407.10. The scope of these investigations includes all products classified under this subheading. The petitioners do not agree to the exclusion of this product. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting the exclusion of these products.

12. *3/4" and 5/16" interior tongue and grooved wall claddings*

Greenwood Forest Products, Ltd. (Greenwood) describes this product as a continuously molded product.<sup>552</sup> The wall claddings have a profiled face and a rough back face, and tongue and groove edges. The length is between 32" and 96". Greenwood states that both products are primarily used in the aftermarket by do-it-yourself homeowners on existing wall structures. They are not interchangeable with any other softwood lumber

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<sup>549</sup> See petitioners' letter, June 27, 2001 at 73.

<sup>550</sup> See letter from Cahan Wood Products Ltd, September 6, 2001.

<sup>551</sup> See petitioners' letter, October 1, 2001, at 17.

<sup>552</sup> See letter from Greenwood Forest Products dated May 17, 2001.

product and domestic availability is limited. They are exported to the United States under HTSUS 4409.10.90.40 and 4409.10.90.20. The petitioners respond that both products are siding and clearly fall within one of the HTSUS classifications identified in the petitions and listed in the scope description.<sup>553</sup>

Department's Position: The scope description clearly covers all products classified under HTSUS 4409.10.90. The petitioners do not agree to the exclusion of this product. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting this exclusion.

13. *Fascia and trim boards*
14. *RealTrim(TM) exterior molding and trimboard system*

The exclusion of fascia and trim boards was requested by Sundance.<sup>554</sup> The requester does not provide a description of the product nor the pertinent HTSUS classification. Sundance indicates that the product is sold in varying degrees of finished state and asks for the exclusion of rough, semifinished, and finished products.

The exclusion of "RealTrim," was requested by Woodtone.<sup>555</sup> Woodtone describes "RealTrim" as an ornamental exterior molding used around windows, doors, gable ends, etc., to improve the appearance of a home. "RealTrim" is manufactured from high-grade spruce; it is molded and then coated with a primer. It is manufactured in custom sizes that are not produced by any other manufacturer in Canada or the United States. "Real Trim" is currently classified under HTSUS 4407.10.0015; however, Woodtone contends that this classification is incorrect. Woodtone states that it is applying for a binding Customs ruling for "RealTrim" to be classified under 4409.10.4500.

With regard to generic fascia and trim boards, the petitioners respond that fascia and trim boards are simply lumber boards used for particular applications and they are within the scope.<sup>556</sup> As for "Real Trim," the petitioners assert that "RealTrim" is primed fascia board, properly classified under HTSUS 4407, and, therefore, covered by the scope of these investigations. The petitioners further state that Woodtone's claim that "RealTrim" is like interior moldings is misleading. The petitioners contend that all information available, including information on Woodtone's web site, confirms that "RealTrim" is "simply a board to be used as fascia or exterior trim" and not a molding.<sup>557</sup>

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<sup>553</sup> See petitioners' letter, June 8, 2001 at 7.

<sup>554</sup> See letter from Sundance Forest Industries and SunPlus Specialty Wood undated (received by the Department on May 29, 2001).

<sup>555</sup> See Woodtone submissions dated May 21, 2001, June 11, 2001, and August 16, 2001.

<sup>556</sup> See petitioners' letter, June 27, 2001 at 73.

<sup>557</sup> See petitioners' letter, September 13, 2001 at 7-8.

Woodtone responds that there is a difference between “actual fascia” and “so-called fascia.” “Actual fascia” is lumber which has been molded, primed, and is actually used in exterior molding applications. In contrast, “so-called fascia” is lumber that is purported to be used as fascia, but is actually used for framing purposes. Woodtone contends that “actual fascia” should not be denied a scope exclusion because “so-called fascia” is causing U.S. producers to lose framing lumber sales. Woodtone provides definitions of “fascia” and “molding” from several sources and concludes that “RealTrim” can be used as fascia; however, that doesn’t preclude it from being defined as a piece of molding, since it meets all definitions of a molding in both physical dimensions and use.<sup>558</sup>

In rebuttal, the petitioners claim that the scope of these investigations includes boards such as “RealTrim.”<sup>559</sup> As to the claim that “RealTrim” is a molding, the petitioners respond that “RealTrim” is “neither a molding nor other builders’ joinery and carpentry of wood.” The petitioners maintain that the evidence on the record demonstrates that “RealTrim” meets the literal terms of HTSUS 4407.1000 and is included in the scope. With regard to the assertion that “RealTrim” is not correctly classified, the petitioners note that the company can avail itself of statutorily-provided procedures for challenging that classification. The petitioners also refute Woodtone’s claim that “RealTrim” or a like product is not available in the United States by contending that “RealTrim” competes directly (and indirectly) with softwood lumber boards produced in the United States.

**Department’s Position:** The Department is not in a position to determine whether the product is a board or a molding. For this reason we rely on Customs’ expertise and take into account Customs’ classification. If Woodtone believes that the current classification is inappropriate, it may want to pursue appropriate procedures with Customs to obtain a new ruling. Furthermore, it appears that the arguments presented by Woodtone specifically address “Real Trim” and not fascia and trim boards in general. In examining products for purposes of scope exclusion, the Department considers generic products, without regard to manufacturers or name brands. To the extent that the product is currently classified under HTSUS 4407.10, “Real Trim” and all fascia and trim board products are covered under the scope. Because the petitioners do not agree to the exclusion of this product and no “overarching” reasons were presented for the exclusion, we are not granting the exclusion of fascia and trim boards from the scope of these proceedings.

#### 15. *Flooring and siding*

Weldwood asked for the exclusion of siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed (including re-sawn bevel siding) and flooring

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<sup>558</sup> See *Id.* at pages 3-5.

<sup>559</sup> petitioners’ submission dated October 23, 2001 at page 10.

(including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.<sup>560</sup> The reasons for the exclusion would be based on the fact that these products are highly specialized and constitute trivial export volumes.

The petitioners respond that flooring and siding are expressly covered by HTSUS 4409.<sup>561</sup> Flooring and siding compete with other types of softwood lumber products arguing, for example, that fascia is softwood lumber within the scope, but that it could just as well be called siding.

Department's Position: Flooring and siding are covered in the scope. The petitioners do not agree to the exclusion of these products. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting this exclusion.

#### 16. *Guard rails*

Weldwood describes guard rails as rough, full-sawn timbers measuring 6"x8" in 5' and 7' lengths. They have an angle-cut top and pre-drilled bolt holes, and they are used to support the metal barrier of a highway guard rail.<sup>562</sup> The petitioners respond that "guard rails" are large pieces of lumber and note that Weldwood did not claim that these products are classified under an HTSUS heading outside the scope of these investigations. The petitioners assert that guard rails share the same general characteristics as all softwood lumber products that are covered by these investigations.<sup>563</sup>

Department's Position: The information on the record is insufficient for the Department to make a determination. Therefore, we are not granting this exclusion.

#### 17. *Cedar shingle blocks*

Shakertown 1992, Inc. (Shakertown) requested that the Department exempt certain specialty cuts of Western red cedar imported from Canada.<sup>564</sup> Shakertown purchases Western red cedar material cut from shingle blocks on shingle saws in nominal lengths of 18, 15, 12 and 9 inches. Shakertown provided the grading standards for the specialty cut material it purchases and indicated then the purchased boards are currently classified under HTSUS 4407 and are subject to the investigations.

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<sup>560</sup> See Weldwood letter, dated May 21, 2001.

<sup>561</sup> See Weldwood letter, June 27, 2001 at 37.

<sup>562</sup> See Weldwood submission, May 21, 2001, at 3.

<sup>563</sup> See petitioners' letter, June 27, 2001, at 41.

<sup>564</sup> See letters from Shakertown 1992, Inc., dated September 20, 2001 and an October 15, 2001.

Department's Position: The Department examined the grading standards and noted the other information on the record, including the tariff classification and dimensions of the boards purchased. Based on that information, we have determined that, had Customs considered that the specialty cuts constituted a shake or shingle, these products would have been classified under the HTSUS 4418.50.00, articles of shingles and shakes, which are not covered by the scope of these investigations. However, due to the fact that Customs classifies the specialty cut products under HTSUS 4407, which is within the scope of the investigations, and because the Department has determined that Western red cedar products under that HTSUS subheading cannot be excluded from the investigations. We have not excluded these products from the scope of the investigations.

**C. Components/parts of finished products**

1. *Furniture parts; furniture blanks*
2. *Display fixtures parts*

Alberta provided detailed design and technical descriptions of the furniture parts it manufactures.<sup>565</sup> Copies of invoices which show that the parts in question are not generic, but are earmarked to be used in a specific piece of furniture. Some of the parts appear to require minor finishing operations when assembled, such as planing, trimming to exact length, and finish sanding. Alberta and Sundance provide an HTSUS item number under which they claim their products are covered (HTSUS 9403), but do not submit actual entry documentation (with Customs classification) or an official Customs' ruling to support their statements. Sundance indicates that the furniture parts and blanks are value-added non-construction type products. They are delivered in varying degrees of finished state. Sundance asks that all rough, semifinished, and finished products be excluded.

Alberta also requested the exclusion of display fixtures parts and included in its request pictures of retail shelving units incorporating softwood components. The components are described as "pine staves that are approx. 15/16" thick by 4 1/2" wide by 48", 45", or 36" long (length ratio is 85-10-5)." Alberta Spruce claims that shelving staves are classified under HTSUS 9403.60.80.80, but no documentation is provided.

The petitioners point out that the information provided by Alberta Spruce and Sundance does not clearly indicate that the companies produce finished furniture components.<sup>566</sup> In fact, based on the information provided, the petitioners believe that both companies may produce components that, after importation, are used to make parts of furniture that are then assembled into finished furniture. According to the petitioners, these are simply softwood lumber products within the scope of these investigations. Neither company has

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<sup>565</sup> See letter (undated) received by the Department on May 21, 2001 and letter (undated) received by the Department on August 16, 2001. See also letter from Sundance, undated (received by the Department on May 29, 2001).

<sup>566</sup> See petitioners' letter June 27, 2001 at 69, October 1, 2001, at 13, and October 23, 2001, at 3.



submitted Customs rulings indicating that these products are indeed classified as finished furniture components. With respect to the display fixtures parts, the petitioners conclude, based on the description provided, that these parts are simply softwood lumber (boards) of particular dimensions that are likely to be used to manufacture shelving, and are within the scope of the investigations.<sup>567</sup>

Department's Position: To the extent that the product exported to the United States is a furniture part, Customs will classify that merchandise under HTSUS 9403, which provides for furniture (other than medical) and parts thereof. In this case, there is no need for an exclusion. If instead the furniture parts that are being exported are at a processing stage where they have not yet assumed the unique characteristics of a component of a specific item of furniture, they may still be considered generic softwood lumber products and be covered by the scope of these investigations. We are not granting this exclusion.

3. *Recreational vehicle product*
4. *Refrigerator stock*

These requests were submitted by Bridgeside Higa.<sup>568</sup> Recreational vehicle product is finger-joined SPF or hemlock stock produced to exact specifications. This product is shipped to a manufacturer of recreation vehicles and is not useable for any kind of structural application. After importation into the United States, the product may be used as is or may be cut to length for cabinet construction. Refrigerator stock is also finger-joined stock, 1 ½" thick, 3 ½" wide, and 16 feet in length, and is also subject to specific quality requirements. It is used in the manufacture of walk-in refrigerators. It is not clear whether additional operations are necessary in the United States to incorporate this product in refrigerators. The requester claims that its refrigerator stock is classified under HTSUS 4407; the classification of the recreational vehicle stock is unclear.

The reasons for the exclusion requests are the following: 1) low import volumes; 2) inadequate domestic supply, although the price is attractive; 3) not interchangeable with domestic species, such as Southern yellow pine; 4) this product is transacted in the recreational vehicle/refrigerator manufacturing market, not the lumber market; 5) these products do not lend themselves to mass production. The petitioners, however, contend that finger-joined stock, whether used in recreational vehicles or as flooring for refrigerators, is covered under HTSUS 4407 and is included in the scope.<sup>569</sup>

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<sup>567</sup> See petitioners' letter, June 27, 2001 at 69 and October 1, 2001, at 15.

<sup>568</sup> Undated submission received by the Department on May 21, 2001; additional submission dated August 16, 2001.

<sup>569</sup> See petitioners' letter, June 27, 2001, at 66-67 and October 1, 2001, at 16.

Department's Position: Finger-joined stock is covered in the scope. The petitioners do not agree to the exclusion of these products. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting this exclusion.

5. *Trellis stock*

Bridgeside Higa describes this product as a small cross-sectional piece of SPF (11/16" x 13/16").<sup>570</sup> Each purchase order has a specific number of pieces cut to specific lengths for each different model of trellis. In any one shipment, a set amount of trellises can be produced. Trellises are constructed in accordance with customer's specifications. The stock is shipped to a manufacturer who assembles the pieces into a finished product. Once cut to the size required by the construction of trellises, the stock is not resalable. Trellis stock cannot be used for any kind of structural applications. Import volume is low and domestic supply is limited, notwithstanding an attractive price. Domestic species (such as Southern yellow pine) are not good substitutes. Trellis stock does not compete with lumber, since its price is determined by the demand for trellises. This product does not lend itself to mass production. The HTSUS classification is 4407. The petitioners claim that this product is covered under the scope, since the dimensions provided indicate that this is softwood lumber over 6 mm in thickness.<sup>571</sup>

Department's Position: The scope of these investigations includes all products classified under HTSUS 4407.1000. The petitioners do not agree to the exclusion of trellis stock. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting this exclusion.

6. *Turb-o-Web Truss Webs*

Tembec claims that Turb-O-Web truss webs are not included in the scope of these investigations.<sup>572</sup> This product is a supporting member connecting the top and bottom members of a roof truss. They are radius cut at both ends and are precisely cut according to specific truss design requirements. They are imported ready for assembly. Tembec provides reference to a Customs ruling, in which Turb-O-Web components are classified under subheading 4418.90.4090, provided that the truss components adhere to specific dimension requirements and were sold to truss manufacturers.

The petitioners claim that the Customs' ruling was specifically limited to truss components meeting certain specific requirements and claim that Tembec is now asking the Department to exclude Turb-O-Web truss components regardless of whether they

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<sup>570</sup> Undated submission received by the Department on May 21, 2001; additional submission dated August 16, 2001.

<sup>571</sup> See petitioners' letter June 27, 2001, at 67.

<sup>572</sup> See letter from Tembec, dated May 21, 2001 at 19.

meet those requirements.<sup>573</sup> The petitioners state that what Tembec seeks to describe as "Turb-O-Web" here is nothing more than softwood lumber, clearly within the scope of this investigation.

Department's Position: As we have already stated with regard to "Real Trim," the Department only considers generic products for purposes of exclusion, not brand name products. The Department has already preliminarily determined that complete trusses (assembled and unassembled) are excluded from the scope<sup>574</sup> and that truss components are included under the scope.<sup>575</sup> Tembec has not provided any new information requiring the reexamination of these decisions.

7. *Cable reel staves*

Universal Reel & Recycling Inc. asked for the exclusion of contoured reel staves.<sup>576</sup> Staves are less than 48" long and are a component of cable reels. Staves are sold to reel manufacturers. They are classified under HTSUS 4409.10.9040. The petitioners respond that this subheading is expressly covered in the petition; therefore, the staves are within the scope.<sup>577</sup> The requester has not presented any information that would lead to the conclusion that they should be classified elsewhere in the tariff schedule.

Department's Position: The scope of these investigations includes all products classified under HTSUS 4409.1090. The petitioners do not agree to the exclusion of contoured staves. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting this exclusion

8. *Box parts/crating parts/vegetable box components*

Sundance requests the exclusion of box parts and crating parts. It does not provide a description of the product.<sup>578</sup> It provides HTSUS 4415 as the proper tariff classification, with no corroboration from Customs. It indicates that the product is sold in varying degrees of finished state and asks for the exclusion of rough, semifinished, and finished products. The petitioners respond that the tariff classification provided is not corroborated by Customs documentation and that "lumber pieces to make boxes are not

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<sup>573</sup> See petitioners' letter, letter dated June 27, 2001 at 23.

<sup>574</sup> AD Prelim at 56063.

<sup>575</sup> Amended Prelim at 6231.

<sup>576</sup> See letter from Universal Reel and Recycling Inc., dated May 18, 2001.

<sup>577</sup> See petitioners' letter June 27, 2001 at 69.

<sup>578</sup> See letter from Sundance Forest Industries and SunPlus Specialty Wood undated (received by the Department on May 29, 2001).

classified under HTSUS 4415.<sup>579</sup> Without a technical description, the product is simply a piece of softwood lumber that may be used to manufacture boxes, and thus within the scope.

Weldwood requested the exclusion of vegetable box components.<sup>580</sup> The product is described as SPF lumber measuring 1 ½" by 1 ¼" in PET specified lengths, to be used as components for the construction of vegetable crate ends. No support is provided for the request, except for a generic statement that it is a highly specialized product and constitutes trivial export volume. The petitioners state that these "vegetable box components" are just short pieces of lumber.<sup>581</sup> The requester does not claim that they will be imported in complete kits or sets, with all necessary parts to assemble the vegetable box.

Department's Position: Box parts, crating parts and vegetable box components, based on the description provided are generic pieces of lumber, generally classified under HTSUS 4407. Such products are covered under the scope of these investigations. The petitioners do not agree to the exclusion of these products. No "overarching" reasons were presented for the exclusion. Therefore, we are not granting this exclusion.

### Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish in the Federal Register the final determination of the investigation and the final weighted-average dumping margins.

Agree ☒

Disagree ☐



Faryar Shirzad  
Assistant Secretary for  
Import Administration

March 21, 2002

Date

<sup>579</sup> See petitioners' letter June 27, 2001 at 72.

<sup>580</sup> See letters from Weldwood dated May 21, 2001 and August 17, 2001.

<sup>581</sup> See petitioners' letter, June 27, 2001 at 43.

# Attachment 2



KAV 8209

Temp. State Dept. No. 07-222

CANADA

Softwood lumber agreement

Agreement concerning softwood lumber, with annexes. Signed at  
Ottawa September 12, 2006. Entered into force October 12, 2006.

**SOFTWOOD LUMBER AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**  
**AND**  
**THE GOVERNMENT OF CANADA**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA ("UNITED STATES") AND THE GOVERNMENT OF CANADA ("CANADA")**

**HAVE AGREED** as follows:

**ARTICLE I**

**Scope of coverage**

1. This Agreement ("SLA 2006") applies to trade in Softwood Lumber Products. Softwood Lumber Products are those products listed in Annex 1A. For domestic implementation and administration purposes only, Canada shall rely on the Canadian Table of Concordance in Annex 1B.
2. No products shall be added to, or removed from, the scope of the SLA 2006 after April 27, 2006 without the agreement of the Parties, regardless of a decision, ruling, determination, or re-determination by a Party, the effect of which would be to:
  - (a) classify or reclassify a product within or outside a tariff item in Annex 1A; or
  - (b) determine or rule that a product is within or outside a product description in Annex 1A.
3. If there is a dispute as to whether a product is a Softwood Lumber Product, a Party shall refer the matter to a Technical Working Group established under Article XIII(C), by providing written notice of the referral to the other Party.
4. Within 60 days after a Party provides written notice under paragraph 3, the Technical Working Group shall review the matter and, where possible, provide a non-binding recommendation to the Parties regarding whether the product in question falls within or outside a tariff item or product description in Annex 1A.
5. If, following the 60-day period specified in paragraph 4, the Parties fail to resolve the matter, either Party may initiate dispute settlement under Article XIV.
6. If a tribunal established under Article XIV issues an award clarifying whether a product falls within or outside a tariff item or product description in Annex 1A, the award shall govern whether the SLA 2006 applies to the product.

## ANNEX 1A

### Softwood Lumber Products

1. The products covered by the SLA 2006 are softwood lumber, flooring and siding ("Softwood Lumber Products"). Softwood Lumber Products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1020, and 4409.1090, respectively, of the HTSUS, and any softwood lumber, flooring, and siding described below. These Softwood Lumber Products include:

- (a) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters;
- (b) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed;
- (c) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;
- (d) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed; and
- (e) coniferous drilled and notched lumber and angle cut lumber.

Other merchandise that shall be included in the definition of Softwood Lumber Products are:

- (f) any product entering under HTSUS 4409.10.05 which is continually shaped along its end and/or side edges which otherwise conforms to the written definition of the scope; and
- (g) lumber products that USCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the criteria listed in paragraph 4 below, as well as truss components, pallet components, and door and window frame parts, which may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

2. Although the HTSUS subheadings are provided for convenience and USCBP purposes, the written description of the merchandise subject to the SLA 2006 is dispositive.

3. The following Softwood Lumber Products are excluded from the scope of the SLA 2006:

- (a) trusses and truss kits, properly classified under HTSUS 4418.90;
- (b) I-Joist beams;

- (c) assembled box spring frames;
- (d) pallets and pallet kits, properly classified under HTSUS 4415.20;
- (e) garage doors;
- (f) edge-glued wood, properly classified under HTSUS 4421.90.97.40;
- (g) properly classified complete door frames;
- (h) properly classified complete window frames;
- (i) properly classified furniture;
- (j) articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, of the HTSUS (TIB); and
- (k) household and personal effects.

4. The following Softwood Lumber Products are excluded from the scope of the SLA 2006 provided that they meet the specified requirements detailed below:

- (a) stringers (pallet components used for runners); if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40;
- (b) box-spring frame kits, if they contain the following wooden pieces – two side rails; two end (or top) rails; and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, and should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1 inch in actual thickness or 83 inches in length;
- (c) radius-cut box-spring-frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner;
- (d) fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 of an inch or more;

- (e) U.S.-origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of the SLA 2006 if the following conditions are met: (1) if the processing occurring in Canada is limited to kiln drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to the satisfaction of USCBP that the lumber is of U.S. origin; and
- (f) in addition, all Softwood Lumber Products entered claiming non-subject status based on U.S. country of origin shall be treated as excluded under the SLA 2006, provided that these Softwood Lumber Products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to USCBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.

Softwood Lumber Products contained in single family home packages or kits, regardless of tariff classification, are excluded from the scope of the SLA 2006 if the importer certifies to items (a), (b), (c), and (d) and requirement (e) is met:

- (a) the imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
- (b) the package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
- (c) prior to importation, the package or kit must be sold to a retailer in the United States of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
- (d) Softwood Lumber Products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the USCBP import entry; and
- (e) for each entry into the United States, the following documentation must be retained by the importer and made available to USCBP upon request:
  - (i) a copy of the appropriate home design plan, or blueprint matching the customs entry in the United States,
  - (ii) a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer,



- (iii) a listing of inventory of all parts of the package or kit being entered into the United States that conforms to the home design package being imported, and
- (iv) in the case of multiple shipments on the same contract, all items listed in (iii) which are included in the shipment at issue shall be identified as well.

# Attachment 3

**HTS - 441520: PALLETS, BOX PALLETS AND OTHER LOAD BOARDS OF WOOD; PALLET  
COLLARS OF WOOD**

**General First Unit of Quantity by General First Unit of Quantity  
for Canada**

**U.S. General Imports**

**Annual Data**



Quantity Description	1998	1999	2000	2001	2002	2003	2004	2005	2006
	<i>In 1,000 Units of Quantity</i>								
number	23,155	35,760	33,531	26,307	28,848	30,970	31,447	32,800	29,333

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

Average from 1998-2000: 30,815

Average from 2001-2006: 29,951

# Attachment 4



Case Nos. A-122-838/C-122-839

Investigations

Public Document

Group II/Office VI/MM/GL

MEMORANDUM TO: Bernard T. Carreau *BTC 10/30/01*  
Deputy Assistant Secretary  
Group II

THROUGH: Melissa G. Skinner  
Director, Office VI

Gary Taverman  
Director, Office V

FROM: Maria MacKay, Senior Analyst, Office VI  
Gayle Longest, Analyst, Office VI  
David Layton, Analyst, Office V

SUBJECT: Scope Clarification in the Antidumping and Countervailing Duty  
Investigations on Softwood Lumber from Canada

### Background

In the notice of preliminary countervailing duty (CVD) determination,<sup>1</sup> in response to a number of scope comments and clarification requests, the Department provided a list of products which were preliminarily found to be outside the scope of these investigations. Petitioners, respondents, and other interested parties provided comments and rebuttal comments.<sup>2</sup> Concurrently, the U.S. Customs Service (Customs) identified some concerns with regard to the definitions adopted by the Department for certain product exclusions. In light of these comments, we are revisiting our preliminary scope determination.

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<sup>1</sup>Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada, 66 FR 43186 - 43188 (August 17, 2001)

<sup>2</sup>Quadra Wood Products Ltd., August 15, 2001 submission; Clifford Chance Rogers and Wells on behalf of Sinclair Enterprises, Ltd., C.J. Hodder Lumber Co., Inc, and ISPA, submissions of August 23, 2001 and October 17, 2001; Memorandum to the File from Maria MacKay on Meeting with Representative of the Wood Truss Council of America, August 28, 2001; Petitioners' submissions dated September 13, 2001, October 1, 2001, and October 10, 2001; Pacific Western Lumber, Inc., September 17, 2001 submission; Jones & Jones LLC, September 6, 2001 submission; Empire Wholesale Lumber Co., September 25, 2001 submission; Northwest Truss Fabricators Association (NWTFA), September 27, 2001 submission; Girard Wood Products, Inc., September 28, 2001 submission; NEPA Pallet & Container, September 28, 2001 submission.





## Analysis

### *Trusses and Pallets*

In the preliminary CVD determination, we stated that trusses and pallets are outside the scope of these investigations. We received comments from U.S. remanufacturers producing trusses and pallets from Canadian lumber. They argue that the exclusion of trusses and pallets, results in a two-tiered pricing system for lumber in Canada, one for domestic (Canadian) consumption and the other for exports to the United States. Therefore, they find themselves at a competitive disadvantage with respect to their Canadian competitors, since Canadian remanufacturers are producing trusses and pallets without incurring the additional cost of the 19.3% countervailing duty. The companies argue that they should have equal access to Canadian lumber as do their Canadian competitors. Alternatively, they urge the Department to include trusses and pallets in the scope of these investigations.

Petitioners respond that, while they agree that “exclusion loopholes” should be closed, they are not aware of a basis for expanding the scope of these investigations to include products that clearly were never intended to be in the scope, such as trusses and pallets.

The scope of the investigations is based on the product coverage outlined in the petition. To the extent that the petitioners in this case did not intend to seek trade relief against imports of trusses and pallets, the Department has no authority to include now those products within the scope of these proceedings. *See Initiation of Antidumping Duty Investigations on Spring Table Grapes from Chile and Mexico*, 6 FR 26833, May 15, 2001.

### *Large edge-glued panels*

In the preliminary CVD determination, we excluded from the scope “large edge-glued lumber panels used in furniture or door manufacturing, classified under HTSUS item 4421.” Customs asked the Department to clarify the modifier “large.”

In response, petitioners define “large” as panels 12” or more in actual width. They argue that edge-glued panels narrower than 12” should be covered. “Narrower edge-glued lumber is directly competitive and interchangeable with boards that are clearly within the scope.”<sup>3</sup>

We disagree with petitioners’ position that less-than-12”-wide edge-glued panels should be included in the scope. Petitioners’ argument that such panels should be covered because they are “directly competitive and interchangeable” with boards covered under the scope, denotes an overriding concern with the potential for circumvention. While we share this concern, we have no evidence at this time that this is likely to occur through the shipment of less-than-12”-wide edge-glued panels. In any event, the Department has explicit statutory authority to address the circumvention of an order (*see* sec. 782 of the Act). Under these circumstances, we have determined that it is appropriate to exclude edge-glued panels (of any dimension) from the scope of these investigations. Consequently, we have amended the language of the exclusion to read “edge-glued wood”, rather than “large edge-glued panels.”

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<sup>3</sup> Dewey Ballantine October 1, 2001 submission at 5.

*Truss kits*

In the preliminary CVD determination, we excluded truss kits meeting the following requirements: 1) that they include the exact number of pieces, cut at the appropriate angle, necessary to create a truss of a specified length and height, and all metal and wood scabs; 2) that each kit is separately packaged.

Customs noted that the HTSUS does not require that truss kits include metal scabs; therefore, under this exclusion language, Customs would have to check each kit to ensure that it contains the metal pieces. Customs also pointed out that the requirement of individual packaging does not correspond to current industry practice nor to Customs regulations concerning kits<sup>4</sup>. Unassembled trusses are normally shipped with identical truss components bundled together. Customs also confirmed that articles imported assembled or unassembled are classified under the same appropriate heading; all the components of the article have to be imported together, but not necessarily packaged as a unit. In addition, Customs has accepted shipments made within 24 hours as entireties, if all appropriate laws and regulations are met. In addition, Customs pointed out that trusses and truss kits are classified under HTSUS 4418, which is not currently listed in our scope description. Should the Department find that certain truss kits (those not containing metal scabs or not individually packaged) are covered by the scope, Customs asked that the scope description list HTSUS 4418 together with the other HTSUS item numbers.

In response, petitioners agree to remove the requirement to include metal fasteners in the kit, but stand by the requirement that all the pieces intended for a specific truss be individually "bundled". Petitioners contend that individual packaging is a commercially viable method of exporting the truss kits and the only appropriate solution that will safeguard against evasion and manipulation.<sup>5</sup>

We disagree with petitioners' position that we should require that all pieces intended for a specific truss be individually bundled. Petitioners recognize that trusses are a finished product different from lumber and are not covered by these investigations. Truss kits are finished trusses, shipped unassembled. Petitioners are concerned that, if kits are not bundled together, a truck could contain components or stock that may be assembled into a truss, but not truss kits. However, petitioner has also recognized that Customs already rejected the contention that truss components should be classified in HTSUS 4418 and instead classified such wood in heading 4407, which is included in the scope.<sup>6</sup> Furthermore, in order to prevent manipulations, Customs has agreed to place criteria under the appropriate subheading which will bring entries of the subject merchandise to the attention of the Import Specialist for review and verification of the

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<sup>4</sup>Letter from John Durant, Director, Commercial Rulings Division, USCS, to Melissa Skinner, Director, Office VI, Import Administration, Dept. of Commerce, dated October 30, 2001, which is on file in the Central Records Unit (CRU), room B099, Main Commerce Building.

<sup>5</sup>Dewey Ballantine, October 1, 2001 submission at 5.

<sup>6</sup>Dewey Ballantine, June 27, 2001 submission at 31.

claimed classification<sup>7</sup>. Therefore, we conclude that truss kits, properly classified under HTSUS 4418, should be excluded from the scope of these investigations.

*Unassembled pallet kits*

In the preliminary CVD determination, we excluded unassembled pallet kits meeting the following specifications: 1) each kit is separately bundled; 2) each kit contains the exact number of pieces for a complete pallet; 3) the components meet specific dimension requirements; 4) stringers have notches which also meet specific dimensions requirements.

U.S. and Canadian companies<sup>8</sup> objected to the "separately bundled" requirement. They claim that this requirement is inconsistent with commercial practice and increases transportation costs.

The same companies also object to the restrictions on dimension and design included in the exclusion language. They note that pallets come in many types and sizes, depending on the product they are manufactured to transport. With respect to dimensions, a pallet designed to transport 50-gallon barrels of heavy materials may require 2" x 4" or 2" x 6" deck boards instead of 1" x 4" deck boards. With respect to design, some pallets allow for forklift access through notched stringers, others by using appropriately positioned shorter blocks, instead of stringers. Therefore, there is a basic inconsistency in the Department's scope definition: it excludes all assembled pallets, but only one, very specific, type of pallet kit. Accordingly, the parties argue that if unassembled pallets are shipped with the prescribed ratio of deck boards to stringers, ready for assembly in the United States, without further fabrication, they should qualify for the same exclusion as the assembled pallets.

Customs confirmed that the dimensions provided in the scope for unassembled pallets limits the exclusion to one particular type of pallet. Furthermore, the current definition, size of boards and decking limitations are not realistic nor consistent with industry standards. In determining whether an unassembled pallet kit should be classified as a pallet under HTSUS 4415, Customs takes into account the construction of the pallet, rather than the dimensions of its components, specifically the ratio of stringers to boards. Customs also confirmed that unassembled pallets, like trusses, are generally not packaged individually. All components are shipped together, but they are not necessarily packaged as a unit; Customs also has accepted shipments made within 24 hours as entireties if all appropriate laws and regulations are met.

Petitioners take note of the fact that legitimate pallets (and pallet kits) may exceed the dimensions specified in the preliminary determination.<sup>9</sup> However, they remain of the view that in order for pallet kits to be excluded from the scope of these investigations, the description of

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<sup>7</sup>Letter from John Durant, Director, Commercial Rulings Division, USCS, to Melissa Skinner, Director, Office VI, Import Administration, U.S. Dept. of Commerce, dated October 30, 2001, which is on file in the Central Records Unit (CRU), room B099, Main Commerce Building.

<sup>8</sup>Big Valley Pallet, August 21, 2000 submission; Pacific Western Lumber Inc., September 17, 2001 submission; Jones & Jones, LLC, September 6, 2001 submission.

<sup>9</sup>Dewey Ballantine, October 1, 2001 submission, at 10 and 18.



these items must be limited as follows: 1) deck boards must be 2" or less in nominal thickness and 52" or less in length; 2) stringers must be of either nominal dimension 4" x 4", notched or unnotched, and 12' or less in length; or notched stringers of nominal dimension 2" x 4", and 52" or less in length; or if of a block-type pallet, the kit contains blocks but no stringers, with no block less than a nominal 4" nor greater than a nominal 12" in any dimension; and 3) the kit includes the exact number of pieces for one complete pallet packaged together in one package, with no extra pieces of wood nor requiring any additional processing other than assembly in the United States. When a stringer must be notched, there must be at least two notches at least 1 1/4" deep and 7" wide.

Petitioners further contend that, if Customs were not to classify an alleged "pallet kit" under HTSUS 4415 but instead classified it in either 4407 or 4409 subheadings, then the merchandise would be within the scope of these investigations, whether or not it met the requirements for exclusion. On the other hand, if Customs classified a pallet kit under HTSUS 4415 and the product did not meet petitioners' exclusion requirements, then the merchandise would fall within the scope as well.

We disagree with petitioners. Petitioners accept the principle that pallets and "legitimate" pallet kits are outside the scope of these investigations. In order to address petitioners' concern with regard to potential loop holes, Customs has agreed<sup>10</sup> to place criteria under heading 4415 which will bring entries of the subject merchandise to the attention of the Import Specialist for review and verification. Therefore, we conclude that all pallet kits, so recognized by Customs and properly classified under HTSUS 4415, regardless of dimensions, should be excluded from these investigations.

#### *Stringers (pallet components used for runners)*

In the preliminary CVD determination, we excluded stringers meeting certain dimension requirements, with notches of specified dimensions. U.S. and Canadian manufacturers<sup>11</sup> argue that an exclusion based on those criteria is flawed, because in fact it affects only one type of stringer; as such, it unfairly restricts legitimate pallet exporters and importers. Customs confirms that the definition of stringers provided in the preliminary determination is restrictive and is not representative of industry standards.

In response, petitioners agreed to modify the requirements as follows: (1) stringers are of nominal dimension 2" x 4" or less, (2) their length is limited to 52", and (3) they must have at least two notches, positioned on the side of the stringer, not less than 1 1/4" deep and not less than 7" wide.

There is agreement among all parties that stringers, when traded separately from the other pallet components, must have notches. However, for the same reasons discussed in the pallet section, respondents and Customs agree that the specific dimensions of the notches and the

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<sup>10</sup>Letter from John Durant, Director, Commercial Rulings Division, USCS, to Melissa Skinner, Director, Office VI, Import Administration, U.S. Dept. of Commerce, dated October 30, 2001, which is on file in the Central Records Unit (CRU), room B099, Main Commerce Building..

<sup>11</sup>Jones and Jones and Pacific Western Lumber Inc.

length of the stringer may vary depending on the construction of the pallet. Consequently, we uphold the requirement that stringers be notched to properly accommodate forklift blades and that the notches be positioned at equal distance from the center to allow balancing the load. However, consistent with our approach to the exclusion of pallet kits, we are not imposing specific limitations of the dimensions of the stringer or of the notches.

#### *Bed-frame kits*

In the preliminary CVD determination, we excluded bed-frame kits meeting the following requirements: 1) the kit includes all pieces required to make the bed frame; 2) each kit is individually bundled; 3) no further manufacturing is required; 4) none of the components exceeds 1" in nominal thickness or 83" in length.

U.S. manufacturers<sup>12</sup> claim that bed frames are assembled with nails or staples, which do not need to be included. They suggest that the exclusion language be amended to indicate that the kit should include all wooden parts used to make the bed frame.

They also object to the requirement that each kit be individually bundled because individual packaging is neither common in the industry nor practical. They claim that, under Customs law, the kit requirement is met if all the wooden parts were entered in the same shipment. They further contend that a "kits-only" exclusion will impose significant costs and logistical burdens on the industry since bed-frame components are manufactured, marketed, and purchased on a per-component basis. To ship these products efficiently, manufacturers load trucks to maximize the amount of board feet per vehicle. In addition, some manufacturers produce only one or a few components at once. Thus, a "kits-only" requirement would require these producers to either hold inventories until they had a sufficient number of complete kits or to consolidate loads of different components made by different producers.

With regard to dimension, the companies explain that in the lumber industry "nominal" measurements refer to products that have a slightly smaller measurement. Therefore, a product having a "nominal" thickness of one inch has an "actual" thickness of 3/4". They claim that a certain segment of the box spring manufacturing industry requires a thickness of 15/16". Therefore, respondents request that the word "nominal" be eliminated; alternatively, the *nominal* thickness should be increased to 1 1/4".

Customs suggests that a more precise and clear nomenclature is "box springs frames", rather than "bed frames," that the dimensions of the kits be revised to allow more flexibility, that a more detailed description of the kit components be provided, and that radius-cut components be specified as having the radius cut on both ends. Customs also confirmed that current industry practice is to ship identical bed-frame components bundled together, not in kits.

Petitioners underscore the fact that the exclusion of bed-frame kits provides producers and importers with an exception not afforded under Customs classification practice. There is no HTSUS classification for a "bed frame kit" (or, more precisely for a "box spring frame kit"), since assembled bed frames are actually components of box springs and not a finished product.

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<sup>12</sup> *Clifford Chance Rogers & Wells, Empire Wholesale Lumber Co., and Jones & Jones LLC.*



Therefore, Customs classifies square-end bed frame components under HTSUS heading 4407 regardless of whether they are included in a "kit."

Petitioners agree that metal fasteners need not be part of the kit. However, because they are providing an exception to Customs practice, petitioners support a narrow interpretation of the exception and object to the elimination of the individual packaging requirement. Petitioners state that this bundling requirement is a commercially reasonable one and cite to statements to that effect made by importers to Customs.<sup>13</sup>

Petitioners, however, agree with Customs on the need for a more detailed description of the kits. In petitioners' amended definition, the bed-frame kit contains "the following wooden pieces: two side rails, two end (or top) rails and varying numbers of slats. If the side rails and end rails are radius-cut, both ends will be so. The kits should not contain any pieces that are greater than 83" in length nor more than 1" in actual thickness."

Customs confirms petitioners' understanding that the components of a box-spring-frame kit, whether individually packaged or not, are classified under two separate headings (4407 or 4409 for the square end pieces and 4421 for the radius cut pieces). Customs also points out that, because of this fact, an exclusion for box spring frame kits may result in enforcement problems, whether or not the kits are individually bundled. Furthermore, Customs also stated that no statistical information will be available on imported kits, since there is no HTSUS classification covering this type of kit.

Petitioners were clearly aware of the classification issue when they recommended the adoption of the exclusion for bed-frame kits. Therefore, we have no reason to believe that the enforcement and classification issues highlighted by Customs were not already factored into petitioners' recommendation. To the extent that petitioners are not interested in seeking relief against this product, we cannot require them to do so. *See Initiation of Antidumping Duty Investigations on Spring Table Grapes from Chile and Mexico*, 6 FR 26831, May 15, 2001.

In the Department's view, the case of the bed frames is different from the case of trusses and pallets, in that the assembly of the components of the kit results in an intermediate product, the wooden frame of a box spring, rather than in a finished product. Furthermore, the information on the record clearly indicates that "kits" are not consistent with industry practice. Empire, a wholesaler shipping a large volume of bed frame components to manufacturers of mattresses, states: "The assembly plants order the individual components on an "as needed" basis to minimize their inventory investment. The ratio of quantities ordered will vary from shipment to shipment as a result of on line rejection of components, mishandling, special order needs, misshipment by other vendors, and other stimuli outsider the control of the exporter of any specific shipment." The International Sleep Products Association (ISPA) plainly states that "bed-frame components have been manufactured, marketed, and purchased on a per-component basis. Producers, resellers, and purchasers simply do not think of their bedframe requirements in terms of "kits." Clearly this industry utilizes components of bed frames, rather than kits. As a result, we conclude that the industry would not be helped even by a relaxation of the requirement for individual bundling.

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<sup>13</sup>Dewey Ballantine, October 1, 2001 submission at 7.

The scope exclusion under consideration here is an exclusion for “kits”, not for components. Based on the above considerations, we are continuing to allow the exclusion from the scope of bed frame kits (or box-spring-frame kits), basically adopting the exclusion language petitioners have suggested. However, upon Customs recommendation, we are requiring that the kits include side and end rails with radius-cut ends to ensure that this exclusion applies only to legitimate bed frame kits. Square end components, not shipped in a kit individually bundled, continue to be subject to these investigations.

*Radius-cut bed frame components*

In the preliminary CVD determination, we excluded radius-cut bed-frame components meeting certain dimension requirements. U.S. importers and Canadian manufacturers note that Customs classifies radius-cut bed-frame components under HTSUS item 4421. Since the merchandise subject to the scope of the lumber investigations is limited to products classified under HTSUS 4407 and 4409, they claim that radius-cut bed-frame components are outside the scope regardless of dimensions. Furthermore, they note that some radius-cut material has a nominal thickness greater than one inch, therefore they would be subject to the imposition of countervailing duties, when in fact they should be exempted.

Customs suggests that the description of the radius-cut box spring frame component be clarified to include a radius cut on both ends. They also point out that additional flexibility on dimension requirements would bring the exclusion more in line with industry practice. Customs also suggests to change the nomenclature to “radius-cut box spring components” and to eliminate the length limitation to 83”.

In response, petitioners take note of Customs comments and submit an amended definition of the exclusion: 1) not exceeding 1” in actual thickness or 83” in length; 2) ready for assembly without further processing; 3) the radius cut must be present at both ends of the boards and should be no less than 3/4”.

We agree with petitioners and accept their definition. We have not eliminate the 83” length limitation, because the submissions we received from ISPA and other parties did not object to that restriction. We have, however, slightly modified the language describing the required radius cut (item 3 above) as follows: “The radius cut must be present at both ends of the boards and must be substantial cuts so as to completely round one corner.” This language, suggested by Customs<sup>14</sup>, more effectively conveys the same type of dimensional requirement that petitioners wanted to preserve.

*Dog-eared fence pickets*

In the preliminary CVD determination, we excluded dog-eared fence pickets meeting the following requirements: not more than 4” wide, not more than 6’ in length, 1” in thickness, and with a dog ear cut of at least 3/4”. Canadian exporters and U.S. importers<sup>15</sup> objected to these

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<sup>14</sup>Memorandum to the File from Maria MacKay on Teleconference with Paul Garretto, National Import Specialist, USCS, concerning scope exclusions, dated October 30, 2001.

<sup>15</sup> Jones and Jones LLC and Quadra Wood Products, Ltd.

limitations on the ground that Customs has ruled that 6" wide fencing material is "commercially recognizable and principally used as dog-eared fence pickets in the U.S." and is admissible under HTSUS item 4421.90.7040. They also contend that fencing material 6' to 7' in length containing the "cathedral," "picket," or "dog-eared" design can be entered in 2" thickness; the U.S. remanufacturer would then "rip" the material into two 1 inch thick by 4 inch or 6 inch wide fence boards. Customs confirms that the restrictions imposed in the exclusion language are overly strict and do not correlate with industry standards. However, Customs also indicated that their rulings consistently require pickets to be no more than 6' in height.<sup>16</sup>

Petitioners agree that fence pickets requiring no further processing are excluded from the scope. According to petitioners, such pickets are 1" or less in actual thickness, as much as 6" or 8" wide, 7' or less in length, and have dog-ear cuts (of at least 3/4" ) or other finials or decorative cutting (that remove at least that same volume of wood) on at least one end of the picket.

We have taken note of Custom's length limitation and amended petitioners' definition accordingly. We also edited the language proposed by petitioners to describe the shape of the pickets, based on Customs' recommendation, to make it more clear. This language now appears to include the overwhelming majority of the finished pickets that Customs would classify under HTSUS 4421. Those pickets do not fall within the scope of the investigations. Pickets 2" in thickness are not covered by this exclusion. By admission of requestor, they require further processing in the United States. Therefore, they are fencing stock, not finished pickets.

#### Recommendation

That we amend the list of products excluded from the scope of these investigations as follows:

#### Group A. *Softwood lumber products excluded from the scope:*

1. Trusses and truss kits, properly classified under HTSUS 4418.90
2. I-Joist beams
3. Assembled box spring frames
4. Pallets and pallet kits, properly classified under HTSUS 4415.20
5. Garage doors
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40
7. Properly classified complete door frames.
8. Properly classified complete window frames
9. Properly classified furniture

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<sup>16</sup> Letter from John Durant, Director, Commercial Rulings Division, USCS, to Melissa Skinner, Director, Office VI, Import Administration, U.S. Dept. of Commerce, dated October 30, 2001, which is on file in the Central Records Unit (CRU), room B099, Main Commerce Building.



Group B. *Softwood lumber products excluded from the scope only if they meet certain requirements:*

1. Stringers (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421 90 98 40.
2. Box-spring frame kits: if they contain the following wooden pieces- two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
3. Radius-cut box-spring-frame components, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
4. Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

Agree ☒ Disagree ☐ Let's discuss ☐

## PUBLIC CERTIFICATE OF SERVICE

I, Eric Parnes, hereby certify that a copy of the foregoing public submission has been served this day via first class mail, or via email per prior agreement, upon the following persons:

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