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DEPARTMENT OF COMMERCE

International Trade Administration

A-122-857, C-122-858

Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances

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

SUMMARY: On November 25, 2016, the Department of Commerce (the Department) received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of certain softwood lumber products (softwood lumber) from Canada. In the petitions, the Department received timely allegations that critical circumstances exist with respect to imports of the merchandise under investigation. Based on information provided by the Committee Overseeing Action for Lumber International Trade Investigations (Petitioner), data placed on the record of these investigations by the mandatory and voluntary respondents, and data collected by the Department, the Department preliminarily determines that critical circumstances exist for imports of softwood lumber from certain producers and exporters from Canada.

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

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (for CVD) or Thomas Martin (for AD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3692 and (202) 482-3936, respectively.

SUPPLEMENTARY INFORMATION

Background

Section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), provides that the Department will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that “the alleged countervailable subsidy” is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization; and (B) that there have been massive imports of the subject merchandise over a relatively short period. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect: (A)(i) that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) that there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206 of the Department’s regulations provides that, in general, imports must increase by at least 15 percent during the “relatively short period” to be considered “massive,”¹ and defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.² The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.³

¹ See 19 CFR 351.206(h).

² See 19 CFR 351.206(i).

³ *Id.*

Alleged Countervailable Subsidy is Inconsistent with the SCM Agreement

To determine whether there exists a reasonable basis to believe or suspect that an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, the Department considered the evidence on the record pertaining to Petitioner's allegation that the Export Development Canada: Export Guarantee Program is inconsistent with the SCM Agreement. Specifically, as described in our initiation checklist,⁴ with regard to this program, Petitioner has alleged the elements of a subsidy,⁵ supported with information reasonably available to Petitioner, that appears to be export contingent, which would render it inconsistent with the SCM Agreement. Therefore, the Department preliminarily determines that there is a reasonable basis to believe or suspect that an alleged subsidy in the CVD investigation is inconsistent with the SCM agreement.

History of Dumping and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise. The Department, therefore, considers that it has previously issued an AD order on softwood lumber from Canada, based on nearly identical harmonized tariff schedule numbers.⁶ Furthermore, and with respect to determining whether there is a history of material injury, the Department determines that it is appropriate to rely on the International Trade Commission's (ITC) section 129 affirmative threat

⁴ See CVD Initiation Checklist, dated December 15, 2016 at 37.

⁵ See Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada, dated November 25, 2016 (Petitions) at Volume III, pp. 231-236.

⁶ See *Amendment to Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada*, 69 FR 75916 (December 20, 2004) (*Amended Orders*).

of material injury determination, and finds a history of material injury based on this determination.⁷ Therefore, we preliminarily find that there is a history of dumping and material injury by reason of dumped imports of the subject merchandise.

Massive Imports

In determining whether there are “massive imports” over a “relatively short period,” pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Based on evidence provided by Petitioner, the Department finds that, pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. Specifically, the Softwood Lumber Agreement (SLA) between the United States and Canada expired on October 12, 2015, and expressly provided for a “standstill” period of 12 months after the expiration of the agreement,

⁷ On May 16, 2002, the ITC determined that an industry in the United States was threatened with material injury by reason of imports from Canada of softwood lumber found to be subsidized and sold in the United States at less than fair value, leading the Department to publish antidumping and countervailing duty orders on softwood lumber from Canada. Subsequently, the Government of Canada initiated a dispute settlement proceeding against the United States at the World Trade Organization, resulting in findings, *inter alia*, that the ITC did not act in conformity with the United States’ obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. Accordingly, pursuant to section 129 of the Uruguay Round Agreements Act (19 U.S.C. 3538), the ITC took action that would render its original determination not inconsistent with the findings of the dispute settlement panel. The ITC again determined that an industry in the United States was threatened with material injury by reason of imports from Canada of softwood lumber found to be subsidized and sold in the United States at less than fair value. *See* U.S. International Trade Commission, *Softwood Lumber from Canada; Investigation Nos. 701-TA-414 and 731-TA-928 (Section 129 Consistency Determination)*, Pub. 3740 (Nov. 2004); *see also Amended Orders*.

during which the U.S. domestic industry agreed to not file AD/CVD petitions.⁸ Because of the unique circumstance of the expiration of the SLA in October 2015, importers and Canadian producers/exporters were aware that potential AD/CVD petitions could be filed as early as October 12, 2016. Thus, the Department finds that, pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe that proceedings were likely following expiration of the SLA on October 12, 2015.

In order to determine whether there has been a massive surge in imports for each mandatory respondent (Canfor Corporation (Canfor), Resolute FP Canada Inc. (Resolute), Tolko Marketing Sales Ltd. (Tolko), West Fraser Mills Ltd. (West Fraser)) and J.D. Irving (the voluntary respondent in the CVD investigation), the Department compared the total volume of shipments from October 2015 through June 2016 (*i.e.*, the comparison period) with the preceding nine-month period of January 2015 through September 2015 (*i.e.*, the base period).⁹ For “all others,” the Department compared Global Trade Atlas (GTA) data for the period October 2015 through June 2016 with the preceding nine-month period of January 2015 through September 2015.¹⁰ The Department first subtracted the shipments reported by the mandatory respondents and J.D. Irving from the GTA data. Based on these comparisons, we preliminarily determine that J.D. Irving and “all others” had massive surges in imports.¹¹ The shipment data do not

⁸ See Petitions at Volume I, pp. 70-73.

⁹ Because we only have data from the respondents dating back to January 2015, we intend to solicit shipment data for an equal number of months prior to January 2015 as the base period to compare to the most recent shipment data available through the months of the preliminary determinations.

¹⁰ The GTA data includes the following harmonized tariff schedule numbers: 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.90.25.00.

¹¹ See the AD and CVD Preliminary Critical Circumstances Memoranda, dated concurrently with this notice.

demonstrate massive surges in imports for Canfor, Resolute, Tolko, and West Fraser.

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of softwood lumber shipped by J.D. Irving and “all others.” We preliminarily determine that critical circumstances do not exist with respect to Canfor, Resolute, Tolko, and West Fraser.

Final Critical Circumstances Determinations

We will issue final determinations concerning critical circumstances when we issue our final subsidy and less-than-fair-value determinations. All interested parties will have the opportunity to address the Department’s determinations with regard to critical circumstances in case briefs to be submitted after completion of the preliminary subsidy and less than fair value determinations.

International Trade Commission Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of our determinations.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports exported by certain producers and exporters, if we make an affirmative preliminary determination that countervailable subsidies have been provided to these same producers/exporters at above *de minimis* rates,¹² we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for

¹² The preliminary subsidy determination is currently scheduled for April 24, 2017.

consumption on or after the date that is 90 days prior to the effective date of “provisional measures” (e.g., the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary subsidy rates reflected in the preliminary determination published in the *Federal Register*. This suspension of liquidation will remain in effect until further notice.

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports exported by certain producers and exporters, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates, we will instruct CBP to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of “provisional measures” (e.g., the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the *Federal Register*. This suspension of liquidation will remain in effect until further notice.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR
351.206(C)(2).

/S/ Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 13, 2017

Date