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April 3, 2017

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C-122-858

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Investigation

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VIA ELECTRONIC FILING

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
International Trade Administration
Enforcement & Compliance
APO/Dockets Unit, Room 18022
14th Street & Constitution Avenue, NW
Washington, DC 20230

Re: Certain Softwood Lumber Products from Canada: Comments in Support of Clarifying and Exclusionary Language Proposed by Canada Regarding the Scope of these Investigations

Dear Secretary Ross:

On behalf of the Government of British Columbia, we hereby submit the following comments in support of certain clarifying and exclusionary language regarding the scope of these investigations filed today by the Government of Canada. This letter is timely filed pursuant to the Department's invitation to interested parties to propose clarifying or exclusionary language

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for the Department's consideration in the preliminary determination of its countervailing duty investigation.¹ This letter contains no new factual information.

In its letter filed today, the Government of Canada proposed a definition of "assembled pallets" for which, we understand, the petitioner in these investigations has consented to an exclusion. The Government of Canada also today proposed clarifying or exclusionary definitions for the following products:

- unassembled pallets (pallet kits);
- notched stringers;
- tongue and groove products that are end matched;
- tongue and grooved paneling;
- pre-finished products of a certain thickness;
- flooring;
- siding;
- landscape ties;
- fencing material; and
- ripped and chopped items.

For each of these products, the Government of Canada, following consultations with Canadian producers and exporters of subject merchandise, has proposed specific clarifying or exclusionary language that the Department and U.S. Customs and Border Protection could

¹ See Memorandum to the File from Jeff Pederson, Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language (March 28, 2017) (A-122-857, C-122-858).

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readily administer. The Government of British Columbia urges the Department to seriously consider these scope language proposals, and to implement them in its upcoming preliminary determinations.

The Government of British Columbia also reiterates its support for the scope exclusion requests made in Canada's December 7, 2016 Consultations Paper, including the requested scope exclusion for softwood lumber produced from First Nations Treaty Settlement Lands, among other private lands, and lumber products made from Western Red Cedar, which is used for applications other than the dimensional framing lumber products primarily at issue in this case.² The Government of British Columbia further reiterates its previously explained support for an exclusion from the scope of high-value softwood lumber products, i.e., products valued above U.S. \$500/thousand board feet ("MBF").³ The Government of British Columbia previously explained the grounds for such a product exclusion, including the facts that such products are typically manufactured for specialty applications, are subjected to more rigorous testing, and are traded through distinct channels of distribution separate from those used for the SPF dimensional framing products that are at the center of the Petition's allegations.⁴ Moreover, as the Government of British Columbia also previously explained, the exclusion of high-value softwood lumber products would be consistent with the 2006 Softwood Lumber Agreement between the Government of Canada and the Government of the United States of America ("2006

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

³ See Letter from Akin Gump Strauss Hauer & Feld LLP to the Sec'y of Commerce, "Scope Comments of the Government of British Columbia," dated January 9, 2017.

⁴ *Id.*

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SLA”). Article 6 of the 2006 SLA recognized that separate treatment is warranted for high-value softwood lumber products in light of their distinct manufacturing processes and markets.⁵

Consistent with the 2006 SLA, which governed the importation of softwood lumber products from Canada into the United States through much of the past decade, the Department should also recognize that high-value softwood lumber products are fundamentally distinct from SPF dimensional framing lumber, and exclude these products from the scope of the investigations. Moreover, the proposed value-based exclusion would be readily administrable by the Department and CBP, as British Columbia also previously explained.⁶

Finally, while the Government of British Columbia respectfully requests the Department to implement the above-described scope exclusions, including the specific proposals advanced by the Government of Canada in its submission of today, we also emphasize that these requested scope exclusions are no substitute for the company exclusions process that the Governments of Canada and British Columbia have requested.⁷ As the Department is aware, British Columbia is home to a substantial number of producers and exporters of subject merchandise that do not hold tenure, and that purchase all of their fiber inputs from unaffiliated suppliers in arm’s-length transactions. These many companies thus do not receive the alleged subsidy that is at the heart of these proceedings. While the above-reference scope clarifications and exclusions would address the separate position of this sector of the industry to some limited extent, a proper and

⁵ *Id.*

⁶ *Id.*

⁷ See Letter from Akin Gump Strauss Hauer & Feld LLP to the Sec’y of Commerce, “Government of British Columbia Support for Company Exclusions Process,” dated March 6, 2017; see also Letter from Hughes Hubbard & Reed LLP to the Sec’y of Commerce, “Proposal for Company Exclusions,” dated March 29, 2017.

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complete evaluation of their use of the alleged subsidy programs would require the Department to conduct the requested company exclusions process.

* * * * *

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

Respectfully submitted,

/s/ Spencer S. Griffith

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AKIN GUMP STRAUSS HAUER & FELD LLP
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COUNSEL CERTIFICATION

I, Spencer S. Griffith, with Akin Gump Strauss Hauer & Feld LLP, counsel to the Province of British Columbia, certify that I have read the attached submission of scope comments of the Province of British Columbia, filed on April 3, 2017 pursuant to the countervailing duty investigation regarding Softwood Lumber from Canada (C-122-858). In my capacity as counsel to the Province of British Columbia, 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:

4/3/2017

**PUBLIC CERTIFICATE OF SERVICE
CERTAIN SOFTWOOD LUMBER FROM CANADA
INVESTIGATION
A-122-857/C-122-858**

I, Spencer S. Griffith, hereby certify that a copy of the foregoing submission was served on this 3rd day of April, 2017, on the following parties by hand delivery or by email per prior agreement:

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