

Akin Gump

STRAUSS HAUER & FELD LLP

SPENCER S. GRIFFITH

+1 202.887.4575/fax: +1 202.887.4288
sgriffith@akingump.com

May 5, 2017

Case Nos.: A-122-857

C-122-858

Total Pages: 10

Investigation

ITA/EC/Office III

PUBLIC DOCUMENT

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: Scope Comments of the Government of British Columbia

Dear Secretary Ross:

On behalf of the Government of British Columbia, we hereby reiterate our support for certain scope exclusion requests previously made by the Government of British Columbia, the Government of Canada, and other Canadian interested parties to these proceedings. This letter is timely filed pursuant to the Department's invitation to interested parties, made in the Department's notice of a preliminary countervailing duty ("CVD") determination, to comment

May 5, 2017
Page 2

on proposed scope exclusions within seven days of publication of this notice.¹ Consistent with the Department's invitation to comment, this letter contains no new factual information.

As an initial matter, the Government of British Columbia emphasizes that the current scope of these proceedings is both over-broad and ambiguous in many respects. The very large number of scope exclusion and clarification requests pending before the Department reflects the significant confusion that the current scope has generated. For this reason, the Government of British Columbia is dismayed that the Department, rather than clarifying and correcting the scope to the extent possible in its preliminary CVD determination, has instead apparently elected to delay such resolution on scope matters until its final determinations in these proceedings.² The Government of British Columbia urges the Department to reconsider this delay and resolve the many scope questions before it more expeditiously.

In particular, the Government of British Columbia requests the Department to resolve as soon as feasible a number of scope requests addressed in previous submissions, including the following:

First, the Government of British Columbia reiterates its request for a scope exclusion for high-value softwood lumber products, defined as products valued above U.S. \$500/thousand

¹ *Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 Fed. Reg. 19657 (April 28, 2017).

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).

² *Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 Fed. Reg. 19657 (April 28, 2017) (“...the Department...will incorporate the {scope} decisions into the final CVD and AD determinations...”).

May 5, 2017
Page 3

board feet (“MBF”) (the “High-Value Exclusion”).³ The Government of British Columbia has previously explained the rationale and factual basis for such an exclusion, including the facts that such products are typically manufactured for specialty applications 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 Indeed, as put by a U.S. interested party in a recent submission to the Department, petitioner’s intent is to provide relief to U.S. producers “whose products are classified broadly as commodity construction lumber.”⁵ The Government of British Columbia respectfully submits that the requested High-Value Exclusion presents the simplest and most readily administrable mechanism for ensuring that the remedies imposed in these proceedings avoid unfairly penalizing those B.C. producers and exporters whose various specialty and niche products are *not* the SPF dimensional framing lumber products at the core of the product scope.⁶

The Government of British Columbia understands that petitioner harbors concerns about possible circumvention that may be triggered by the exclusion of certain narrowly defined high-value softwood lumber products that are inputs into remanufactured lumber, as some proponents

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.*

⁵ See Letter of Oregon Industrial Lumber Products, Inc. to the Sec’y of Commerce, “Independent Comments on Scope to DOC,” dated May 2, 2017.

⁶ 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 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. 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.

May 5, 2017
Page 4

of scope exclusions have proposed.⁷ The Government of British Columbia submits that the Department could readily address the Coalition's concern by implementing the High-Value Exclusion, as discussed above. A scope exclusion on these terms would present a clear dividing line between in-scope and out-of-scope merchandise, with no need to verify physical characteristics of the imported merchandise, such as grade or species. The proposed value-based dividing line would be readily enforceable by the Department and Customs and Border Protection ("CBP"), as the Government of British Columbia has previously explained.⁸

Alternatively, should the Department accede to pending requests to exclude from the scope of these proceedings certain categories of high-value softwood lumber that are used as inputs for remanufactured lumber, the Government of British Columbia requests the Department likewise to exclude all downstream remanufactured lumber made from the excluded inputs. The Government of British Columbia is deeply concerned about the commercial turmoil that could result from the exclusion from the scope of certain inputs into remanufactured lumber, while maintaining scope coverage for the end products made from such inputs. Again, the appropriate solution is to exclude from the scope *all* high-value softwood lumber products – all of which are ancillary to the dimensional SPF framing lumber markets underlying petitioner's allegations.

Second, the Government of British Columbia reiterates its support for the scope exclusion requests made in Canada's December 7, 2016 Consultations Paper, including the

⁷ See Letter from Picard Kentz & Rowe to the Sec'y of Commerce, "Additional Comments on Scope," dated April 3, 2017, at 6-7.

⁸ 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.

May 5, 2017
Page 5

requested scope exclusion for softwood lumber made from Western Red Cedar, which is used for applications other than the dimensional framing lumber products primarily at issue in this case, and for softwood lumber made from logs harvested from private land, including First Nations Treaty Settlement Lands.⁹

Third, the Government of British Columbia comments on the Department's decision, in its preliminary CVD determination, not to conduct a company exclusion process on the purported basis that the Department lacks the legal authority to do so.¹⁰ The Government of British Columbia opposes the Department's position, particularly in light of the Department's previously stated willingness to consider a company exclusion process¹¹ and petitioner's consent to such a process.¹²

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 (such as companies that manufacture softwood lumber from timber sourced from non-Crown land, including private land such as First Nations Treaty Settlement Lands). These many companies thus do not receive the

⁹ 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.

¹⁰ *Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 Fed. Reg. 19657 (April 28, 2017).

¹¹ See Letter from Hughes Hubbard & Reed LLP to the Sec'y of Commerce, "Proposal for Company Exclusions," dated March 29, 2017.

¹² Petitioner expressly requested the Department to "consider establishing a limited process for considering company exclusions" if the Department chose to conduct the investigation on a company-specific basis. See Letter from Pickard Kentz & Rowe to the Sec'y of Commerce, "Comments on the Department's subsidy Rate Methodology," dated December 29, 2016, at 6.

May 5, 2017
Page 6

alleged subsidy that is at the heart of these proceedings, and no provision of U.S. law prohibits the Department from conducting a company exclusions process tailored to the unique circumstances of this case. At any rate, the Department's (unfounded) decision not to conduct a company exclusions process leaves the scope exclusions requested by the Government of British Columbia and other interested parties as the sole means of ensuring the appropriate treatment of the many companies that are now subject to preliminary CVD cash deposit requirements based primarily on alleged stumpage subsidies that these companies do not receive. The Department should not allow such a grossly unfair result to stand.

At a minimum – should the Department erroneously refuse to exclude the companies that do not receive the alleged subsidies at the heart of this case through implementation of the requested High-Value Exclusion – the Department should establish the CVD cash deposit rate for lumber remanufacturers on a first-mill basis, as occurred under the SLA 2006 and in previous U.S. CVD proceedings involving softwood lumber from Canada.¹³ The logic underlying the Department's previous acceptance of first-mill treatment has not changed, and warrants the same approach in this proceeding.

Finally, in light of the many pending scope requests before the Department and the absence of any decisions by the Department to date to clarify or revise the scope of these proceedings, the Government of British Columbia expressly reserves its right to submit additional comments on scope, including in its case brief.

¹³ See Letter from Hughes Hubbard & Reed LLP to Sec'y of Commerce, "Request that Remanufactured Lumber Be Treated as a Separate Class or Kind of Merchandise and That a Separate Rate Be Established for Independent Remanufacturers," dated April 5, 2017, at 12.

May 5, 2017
Page 7

* * * * *

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

Respectfully submitted,

/s/ Spencer S. Griffith

Spencer S. Griffith

Bernd G. Janzen

Shana Hofstetter

Yujin K. McNamara

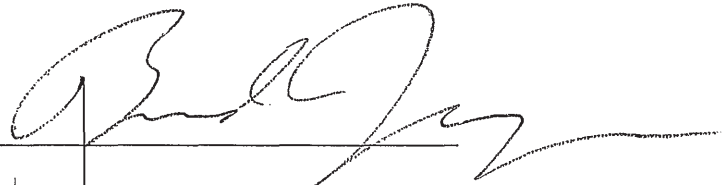
Jared T. Cail

AKIN GUMP STRAUSS HAUER & FELD LLP
Counsel to the Government of British Columbia

COUNSEL CERTIFICATION

I, Bernd G. Janzen, 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 filed on May 5, 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:

5/05/2017

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

I, Spencer S. Griffith, hereby certify that a copy of the foregoing submission was served on this 5th day of May, 2017, on the following parties by hand delivery or by email per prior agreement:

On behalf of the Embassy of Canada

Colin Bird
Embassy of Canada
501 Pennsylvania Avenue, NW
Washington, DC 20001-2111

On behalf of the Government of Canada

Joanne E. Osendarp, Esq.
Hughes Hubbard & Reed LLP
1775 I Street, NW
Washington, DC 20006-2401

**On behalf of the Governments of
Manitoba and Saskatchewan**

Michele Sherman Davenport, Esq.
Davenport & James PLLC
1101 30th Street, NW
Suite 500
Washington, DC 20007

**On behalf of the British Columbia
Lumber Trade Council and its constituent
associations: the Coast Forest Products
Association and the Council of Forest
Industries, and their members**

Mark A. Moran, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

On behalf of Canfor Corporation

Donald B. Cameron, Esq.
Morris, Manning & Martin, LLP
1401 I Street, NW
Suite 600
Washington, DC 20005

**On behalf of the Government of Nova
Scotia**

Thomas M. Beline, Esq.
Cassidy Levy Kent (USA) LLP
2000 Pennsylvania Avenue, NW
Suite 3000
Washington, DC 20006

On behalf of the Government of Quebec

Matthew J. Clark, Esq.
Arent Fox LLP
1717 K Street, NW
Washington, DC 20006-5344

**On behalf of Carrier Lumber Ltd.,
Carrier Forest Products Ltd. And Retail
Industry Leaders Association (RILA)**

Kristin H. Mowry, Esq.
Mowry & Grimson, PLLC
5335 Wisconsin Avenue, NW
Suite 810
Washington, DC 20015

**On behalf of the Committee Overseeing
Action for Lumber International Trade
Investigations or Negotiations
(COALITION)**

David A. Yocis, Esq.
Picard Kentz & Rowe
1750 K Street, NW
Suite 800
Washington, DC 20006

**On behalf of Tembec Inc. and Eacom
Timber Corporation and Barette Wood,
Inc.**

Yohai Baisburd, Esq.
Dentons US LLP
1900 K Street, NW
Washington, DC 20006-1102

**On behalf of the Government of Alberta,
Tolko Marketing and Sales Ltd. and
Tolko Industries Ltd.**

Lawrence A. Schneider, Esq.
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001

On behalf of J.D. Irving, Limited

Walter J. Spak, Esq.
White & Case LLP
701 Thirteen Street, NW
Washington, DC 20001

**On behalf of Representative of Terminal
Forest Products, Ltd.**

Joel R. Junker, Esq.
Junker & Nakachi, P.C.
1191 Second Avenue
Suite 1800
Seattle, WA 98101

**On behalf of Resolute FP Canada Inc.
and Rene Bernard Inc. Conseil de
l'Industrie forestiere du Quebec (CFIQ),
the Ontario Forest Industries Association,
Resolute FP Canada Inc. and Rene
Bernard Inc.**

Elliot J. Feldman, Esq.
Baker Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036-5304

**On behalf of the Government of New
Brunswick**

William H. Barringer, Esq.
Curtis, Mallet-Prevost, Colt & Mosle LLP
1717 Pennsylvania Avenue, NW
Washington, DC 20006

**On behalf of the New Brunswick Lumber
Producers (NBLP) Chaleur Sawmills
Association, Delco Forest Product Ltd.,
Forenbu Lumber Ltd., H.J. Crabbe &
Sons Ltd. and Twin Rivers Paper
Company Inc.**

Richard L.A. Weiner, Esq.
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

On behalf of the Government of Ontario

H. Deen Kaplan, Esq.
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004

**On behalf UFP Western Division, Inc. and
UFP Eastern Division, Inc. (collectively,
UFP)**

David M. Spooner, Esq.
Barnes & Thornburg LLP
1717 Pennsylvania Ave., NW
Suite 500
Washington, DC 20006-4623

On behalf of West Fraser Mills Ltd.

Donald Harrison, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5306