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This document contains no business
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Wilbur L. Ross, Secretary of Commerce
United States Department of Commerce
Attention: Enforcement and Compliance
APO/Dockets Unit, Room 18022
1401 Constitution Avenue, NW
Washington, DC 20230

Attn: Erin Begnal

Re: Proposal for Company Exclusions

Dear Secretary Ross:

This letter follows-up on a meeting that we had with the Department on February 15, 2017 to request that the Department engage in a company exclusions process for Canadian Softwood Lumber companies that are able to demonstrate that they received zero or *de minimis* benefits from the programs under investigation concerning Softwood Lumber products from Canada. We are filing this proposal on behalf of the Government of Canada and (“GOC”) all

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Canadian provincial and territorial governments (“the Canadian Governmental Parties”) as well as the Canadian industry associations.

We would greatly welcome the opportunity to work with the Department to develop a system that will allow the Department to expeditiously process exclusions requests without imposing undue burden on the Department. In addition to the detailed rules contained in the Department’s regulations on company exclusions in the framework of investigations conducted on an aggregate basis,¹ the Department’s regulations also direct the Department to consider voluntary responses² and to exclude “*any* exporter or producer for which the Secretary determines an. . . individual net countervailable subsidy rate of zero or *de minimis*.”³ Thus, the Department’s regulations authorize the Department to conduct a company exclusion process in a company-specific investigation.⁴ Indeed, the Petitioner not only concedes that the Department has such authority but asserts it should exercise such authority in this case. In particular, the Petitioner urged the Department to “consider establishing a limited process for considering company exclusions” if the Department chose to conduct the investigation on a company-

¹ 19 C.F.R. § 351.204(e)(4).

² 19 C.F.R. § 351.204(d)(1).

³ 19 C.F.R. § 351.204(e)(1). Emphasis supplied.

⁴ We note, in this respect, that earlier iterations of the Department’s regulations, codified in former Sections 353.14 and 355.14, provided for such an exclusions process, and contained detailed rules on the form and content of company-specific certifications and supporting foreign government certifications. In the May 19, 1997 Federal Register notification in which the Department announced the replacement of these two provisions with Section 351.204, the Department noted that the more detailed requirements of Sections 353.14 and 355.14 were now “superfluous in light of section 782(a) of the Act and Sec. 351.204(d) (which establishes new procedures for dealing with voluntary respondents) and Sec. 351.204(e)(3) [now subsection (4)] (which deals with exclusion requests in CVD investigations conducted on an aggregate basis).” 62 FR 27296, at 27311. Thus, the Department clearly contemplated that respondents would have an opportunity to establish they were entitled to be excluded from an order, either through filing a voluntary response or through the exclusion process. Given the large number of producers/exporters in this case, an exclusion process would be the most viable procedure to handle most of these requests.

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specific basis.⁵ Allowing for an exclusions process in a case with so many Canadian producers and exporters such as this one will alleviate the Department's workload should it ultimately issue an affirmative final determination. As the Petitioner itself has recognized, a company exclusions process will ultimately reduce the number of expedited review applications the Department can be expected to receive from Canadian companies that were not individually investigated.⁶

The GOC has developed a proposal based upon 19 C.F.R. § 351.204(e)(4), that we believe will streamline the process and facilitate the Department's work.

To this end, we have grouped companies into the following four categories:

Category 1: companies that produce lumber primarily from logs harvested on U.S. lands and/or Canadian private lands, including British Columbia Treaty Settlement Lands.

- These companies are integral to, *inter alia*, the active border trade between Canada and the United States and many of these companies have been excluded in prior investigations and from prior softwood lumber agreements based on the source of their logs.
- Because of the reliance on U.S. logs or logs from Canadian private lands, any stumpage benefits received by these companies will be zero or *de minimis*.
- In order to be eligible for this category these companies will also have to demonstrate that they received zero or *de minimis* benefits from non-stumpage programs.

Category 2: independent remanufacturers who do not hold stumpage (harvest) rights on public (Crown) lands, are not affiliated or cross-owned with entities that hold harvest rights on Crown lands, and that purchase all lumber in arm's length transactions.

- This category involves a separate category of producers (remanufacturers) that are, for the most part, totally distinct from softwood lumber producers.
- Because they do not hold stumpage (harvest) rights on Crown lands and purchase all lumber in arm's length transactions, these companies will not have received any benefits

⁵ Letter from Pickard Kentz & Rowe (on behalf of petitioners) to the Department, re: Certain Softwood Lumber Products from Canada: Comments on the Department's Subsidy Rate Methodology, C-122-858 at 6 (December 29, 2016).

⁶ *Id.* at 6 n 13 (December 29, 2016), stating: "[g]iven the large number of producers that would not be individually examined in a company-specific investigation, relying on [the expedited review] mechanism to deal with requests for company exclusion would seem to place a heavy burden on the Department's resources in the period immediately following this investigation."

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from stumpage programs even if these programs are found to be countervailable by the Department.

- In order to be eligible for this category these companies will also have to demonstrate that they received zero or *de minimis* benefits from non-stumpage programs.

Category 3: companies that do not hold harvest rights on Crown lands, are not affiliated or cross-owned with entities that hold harvest rights on Crown land, and that purchase all logs and/or lumber in arm's length transactions.

- This category is similar to category 2 except that eligible companies are lumber producers, not independent remanufacturers, who are producing their products with both lumber and logs purchased through arm's length transactions.
- Because these producers do not hold stumpage (harvest) rights on Crown lands and purchase all their logs and/or lumber in arm's length transactions, these companies will not have received any benefits from stumpage programs even if these programs are found to be countervailable by the Department.
- In order to be eligible for this category these companies will also have to demonstrate that they received zero or *de minimis* benefits from non-stumpage programs.

and-

Category 4: companies that received *de minimis* benefits from stumpage and non-stumpage programs.

- Applicants that fall within this category will complete *de minimis* worksheets demonstrating that the amount of any net countervailable subsidy (stumpage and non-stumpage received during the period of investigation) was *de minimis*. The calculations required by these worksheets will have to be based, at least in part, on determinations made by the Department during the investigation.

Canada proposes that applications that fall within one of the four categories be supported by certifications from: 1) the applicant; 2) the applicant's cross-owned affiliates;⁷ 3) the applicant's log/lumber suppliers; as well as 4) the applicable provincial/territorial or federal

⁷ Cross-owned affiliates are those Canadian affiliated companies, as defined in 19 U.S.C. § 1677(33), that meet one or more of the following criteria: 1) produces softwood lumber; or 2) operates as a holding company or a parent company (with its own operations) of applicant; or 3) supplies an input product to applicant for production of softwood lumber; or 4) has received a subsidy and transferred it to applicant.

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governmental agencies confirming the factual basis for the exclusion request. These certifications will be provided with respect to the stumpage and non-stumpage programs subject to this investigation.

Canada, with the assistance of outside independent accountants, proposes to review and certify all individual companies' exclusion requests, and to then submit such requests as per the categories outlined above. Canada also proposes to submit to the Department an application package separated by category, to facilitate the Department's consideration of the requests.

The review and certification process that we are proposing will be extensive and thorough. Consequently, we believe that any verification could be done largely, if not entirely, by verifying the process through which company requests are certified, or by verifying only a sample of companies within each category, thus avoiding time-consuming on-site verifications of all companies.

We further believe that the approach reflected in this proposal will be practicable for the Department to consider applications and exclude those companies that fall under any of the four categories that qualify for exclusion during the period of investigation. As the Department surely appreciates, Canada would like to inform Canadian companies of the process as soon as possible, as well as to set up an infrastructure to coordinate with the provincial and territorial governments. As such, we look forward to working more closely with you to discuss this proposal further and to clarify any outstanding questions.

Respectfully submitted,

/s/ Joanne E. Osendarp

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On Behalf of the Government of Canada

Dated: March 29, 2017

CERTIFICATE OF SERVICE

I, Joanne E. Osendarp, hereby certify that a copy of the foregoing submission has been served this day, via email per prior agreement, upon the following persons:

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