



A-122-857

C-122-858

Investigations

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June 23, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia
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RE: Certain Softwood Lumber Products from Canada: Preliminary Scope
Decision

Background

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, filed on behalf of the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the petitioner).¹ On December 22, 2016, the Department published in the *Federal Register* notices of initiation of AD and CVD investigations of

¹ See Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada," November 25, 2016 (*Petition*). The petitioner is an *ad hoc* association whose members are: Collum's Lumber Products, L.L.C., Hankins, Inc., Potlatch Corporation, Rex Lumber Company, Seneca Sawmill Company, Sierra Pacific Industries, Stimson Lumber Company, Swanson Group, Weyerhaeuser Company, Carpenters Industrial Council, Giustina Land and Timber Company, Sullivan Forestry Consultants, Inc., and the U.S. Lumber Coalition, Inc. *Id.*, Volume I at 2.



The Department set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of the signature date of the *AD* and *CVD Initiation Notices*.³ In response, on or before January 9, 2017, the Department received initial comments regarding product coverage from IKEA Supply AG and IKEA Distribution Services Inc. (collectively, IKEA), BarretteWood, Inc. (BarretteWood), Canfor Corporation (Canfor), Central Canada Alliance of the Ontario Forest Industries Association (OFIA) and CIFQ (a joint submission), Conseil de l'industrie forestière du Québec (CIFQ), EACOM Timber Corporation (EACOM), the Government of British Columbia (GBC), the Government of Canada (GOC), the Government of Nova Scotia (GNS), Interfor Corporation (Interfor), J.D. Irving, Limited (J.D. Irving), New Brunswick Lumber Producers (NBLP), Resolute FP Canada Inc. (Resolute), Retail Industry Leaders Association (RILA), Terminal Forest Products Ltd. (TFP), and Western Forest Products Inc. (WFP).⁴ On January 19, 2017, the Department received rebuttal comments from the petitioner, IKEA, and CIFQ.⁵

On March 28, 2017, the Department provided parties an additional opportunity to comment, and to propose scope language, regarding the various exclusion and scope clarification requests presented by

² See *Certain Softwood Lumber Products from Canada: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 93892 (December 22, 2016) (*AD Initiation Notice*); see also *Certain Softwood Lumber Products from Canada: Initiation of Countervailing Duty Investigation*, 81 FR 93897 (December 22, 2016) (*CVD Initiation Notice*).

³ See *AD Initiation Notice*, 81 FR at 93892; *CVD Initiation Notice*, 81 FR at 93898.

⁴ See Letter from Ikea to the Department, "Certain Softwood Lumber Products from Canada: Comments on Scope of Investigation," dated January 4, 2017 (Ikea January 4, 2017 Scope Comments); Letter from BarretteWood to the Department, "Certain Softwood Lumber Products from Canada: Scope Comments – Crating Ladders Components," dated January 9, 2017 (BarretteWood January 9, 2017 Scope Comments); Letter from BarretteWood and EACOM to the Department, "Certain Softwood Lumber Products from Canada: Scope Comments – Bed-Frame Components," dated January 9, 2017 (BarretteWood and EACOM January 9, 2017 Scope Comments); Letter from Canfor to the Department, "Certain Softwood Lumber Products from Canada, Case No. A-122-857: Comments on Scope of Investigation," dated January 9, 2017 (Canfor January 9, 2017 Scope Comments); Letter from CIFQ to the Department, "Softwood Lumber from Canada: CIFQ's Scope Comments," dated January 9, 2017 (CIFQ January 9, 2017 Scope Comments); Letter from GBC to the Department, "Certain Softwood Lumber Products from Canada: Scope Comments of the Government of British Columbia," dated January 9, 2017 (GBC January 9, 2017 Scope Comments); Letter from GOC to the Department, "Certain Softwood Lumber Products from Canada: Comments on Product Coverage and Scope of the Investigations," dated January 9, 2017 (GOC January 9, 2017 Scope Comments); Letter from J.D. Irving to the Department, "Softwood Lumber from Canada: Comments on Scope of the Investigations," dated January 9, 2017 (J.D. Irving January 9, 2017 Scope Comments); Letter from NBLP to the Department, "Certain Softwood Lumber from Canada: New Brunswick Lumber Producers Comments on Scope of the Investigation," dated January 9, 2017 (NBLP January 9, 2017 Scope Comments); Letter from GNS to the Department, "Softwood Lumber from Canada: Scope Comments from the Government of Nova Scotia," dated January 9, 2017 (GNS January 9, 2017 Scope Comments); Letter from OFIA and CIFQ to the Department, "Softwood Lumber from Canada: OFIA and CIFQ's Scope Comments," dated January 9, 2017 (OFIA and CIFQ January 9, 2017 Scope Comments); Letter from Resolute to the Department, "Softwood Lumber from Canada – Resolute's Scope Comments," dated January 9, 2017 (Resolute January 9, 2017 Scope Comments); Letter from RILA to the Department, "Certain Softwood Lumber Products from Canada: RILA Scope Comments," dated January 9, 2017 (RILA January 9, 2017 Scope Comments); Letter from TFP to the Department, "Certain Softwood Lumber from Canada (A-122-857/C-122-858): Scope Comments," dated January 9, 2017 (TFP January 9, 2017 Scope Comments); Letter from WFP and Interfor to the Department, "Softwood Lumber from Canada: Comments on Scope of the Investigation," dated January 9, 2017 (WFP and Interfor January 9, 2017 Scope Comments). Additionally, on January 10, 2017, the Department placed a December 20, 2016 submission from Oregon-Canadian Forest Products (OCFP) on the record. See Memorandum, "Certain Softwood Lumber Products from Canada: Scope Exclusion Requests Received from Oregon-Canadian Forest Products," dated January 10, 2017 (OCFP December 20, 2017 Scope Comments).

⁵ See Letter from CIFQ to the Department, "Softwood Lumber from Canada: CIFQ's Rebuttal Scope Comments," dated January 19, 2017 (CIFQ January 19, 2017 Scope Comments); Letter from IKEA to the Department, "Certain Softwood Lumber Products from Canada: IKEA Rebuttal Comments," dated January 19, 2017 (IKEA January 19, 2017 Scope Comments); Letter from the petitioner to the Department, "Certain Softwood Lumber Products from Canada: Response to Comments on Scope," dated January 19, 2017 (Petitioner January 19, 2017 Scope Comments).

interested parties.⁶ On April 3, 2017, parties submitted additional scope comments as well as proposed scope language resulting from discussions between the petitioner and interested parties.⁷ The Department received comments from BarretteWood, CIFQ, EACOM, GBC, GOC, J.D. Irving, Maibec, the petitioner, Resolute, RILA, UFP Western Division, Inc. and UFP Eastern Division (UFP) Inc., and West-Wood Industries Ltd. (West-Wood). On April 6, 2017, OCFP submitted rebuttal comments.⁸

On April 17, 2017, the petitioner submitted comments and new factual information.⁹ On April 27, 2017, the petitioner filed an amended scope exclusion following an *ex parte* meeting with the Department.¹⁰

On April 28, 2017, the Department provided parties an additional opportunity to comment, and to propose scope language, regarding the various exclusion and scope clarification requests from interested parties.¹¹ On May 2 through May 5, 2017, the Department received comments from All-Coast Forest Products (All-Coast), BarretteWood, Canfor, Central Canada Alliance of the Ontario Forest Industries Association (Central Canada), CIFQ, EACOM, GNS, GOC, Herbert Lumber Company (Herbert Lumber), Independent Wood Processors Association (IWPA), OCFP, OFIA, Oregon Industrial Lumber Products (OILP), Produits Matra Inc. (Matra), the petitioner, RILA, TFP, UFP and WFP.¹² Also on May 5, 2017,

⁶ See Memorandum, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language,” dated March 28, 2017.

⁷ See Letter from BarretteWood to the Department, “Softwood Lumber from Canada: Proposed Scope Language for Crating Ladder Components and Open Web Floor Joists,” dated April 3, 2017 (BarretteWood April 3, 2017 Scope Comments); Letter from BarretteWood and EACOM to the Department, “Softwood Lumber from Canada: Proposed Scope Language for Bed-Frame Components,” dated April 3, 2017 (BarretteWood and EACOM April 3, 2017 Scope Comments); Letter from Canfor to the Department, “Certain Softwood Lumber Products from Canada. Case No. A-122-857: Proposed Scope Language I-Joists,” dated April 3, 2017 (Canfor April 3, 2017 Scope Comments); Letter from CIFQ to the Department, “Softwood Lumber from Canada: Proposed Scope Language - I-Joists,” dated April 3, 2017 (CIFQ April 3, 2017 Scope Comments); Letter from GBC to the Department, “Certain Softwood Lumber Products from Canada: Comments in Support of Clarifying and Exclusionary Language Proposed by Canada Regarding the Scope of these Investigations,” dated April 3, 2017 (GBC April 3, 2017 Scope Comments); Letter from GOC to the Department, “Certain Softwood Lumber Products from Canada: Clarifying or Exclusionary Language Regarding the Scope of the Investigations,” dated April 3, 2017 (GOC April 3, 2017 Scope Comments); Letter from J.D. Irving to the Department, “Softwood Lumber from Canada: Proposed Scope Language,” dated April 3, 2017 (J.D. Irving April 3, 2017 Scope Comments); Letter from Maibec to the Department, “Softwood Lumber from Canada: Proposed Scope Language - Maibec,” dated April 3, 2017 (Maibec April 3, 2017 Scope Comments); Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Additional Comments on Scope,” dated April 3, 2017 (Petitioner April 3, 2017 Scope Comments); Letter from Resolute to the Department, “Softwood Lumber from Canada: Proposed Scope Language – Bedframe Components,” dated April 3, 2017 (Resolute April 3, 2017 Scope Comments); Letter from RILA to the Department, “Certain Softwood Lumber Products from Canada: RILA Scope Comments,” dated April 3, 2017 (RILA April 3, 2017 Scope Comments); Letter from UFP to the Department, “Certain Softwood Lumber Products from Canada: Proposed Clarifying Scope Language Submitted by UFP Western Division, Inc. and UFP Eastern Division, Inc. (A-122-857 & C-122-858),” dated April 3, 2017 (UFP April 3, 2017 Scope Comments); Letter from West-Wood to the Department, “Certain Softwood Lumber from Canada: West-Wood Industries Ltd.,” dated April 3, 2017 (West-Wood April 3, 2017 Scope Comments).

⁸ See Letter from OCFP to the Department, “Oregon-Canadian Forest Products Response to Coalition Additional Comments on Scope, April 3, 2017,” dated April 6, 2017 (OCFP April 6, 2017 Scope Comments).

⁹ See Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: New Factual Information Regarding ALB-Certified Lumber,” dated April 17, 2017 (Petitioner April 17, 2017 Scope Comments).

¹⁰ See Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Clarification Regarding U.S. Origin Lumber Undergoing Certain Types of Processing in Canada,” dated April 27, 2017 (Petitioner April 27, 2017 Scope Comments).

¹¹ See Memorandum, “Deadline for Comments on Proposed Scope Exclusions,” dated April 28, 2017.

¹² See Letter from OILP to the Department, “Independent comments on Scope to DOC Inv. Nos. A-122-857 & C-122-858,” dated May 2, 2017 (OILP May 2, 2017 Scope Comments); Letter from GNS to the Department, “Certain Softwood Lumber from Canada: Scope Comments from the Government of Nova Scotia,” dated May 3, 2017 (GNS May 3, 2017 Scope Comments); Letter from All-Coast and Herbert Lumber to the Department, “Canadian Softwood Lumber Exclusion Request by Oregon-Canada Forest Products,” dated May 5, 2017 (All-Coast and Herbert Lumber May 5, 2017 Scope Comments); Letter from BarretteWood to the Department, “Scope Comments for Crating Ladder Components Exclusion,” dated May 5, 2017

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the petitioner submitted language to amend the scope.¹³ On May 24, 2017, the petitioner submitted a response to a scope-related supplemental questionnaire.¹⁴

SCOPE COMMENTS

Below is a list of the scope issues for which we received comments and rebuttal comments from parties:

- Comment 1. U.S.-Origin Lumber Undergoing Minor Processing in Canada**
- Comment 2. Other U.S.-Origin Lumber**
- Comment 3. Scope Definition Based on HTSUS Classifications**
- Comment 4. Products Not Covered by Prior Softwood Lumber Proceedings**
- Comment 5. The “May Also Be Classified” Clause of the Scope**
- Comment 6. Finished Products**
- Comment 7. Pre-Painted Decorative Wood Products**
- Comment 8. Moldings**
- Comment 9. Remanufactured Products**

(BarretteWood May 5, 2017 Scope Comments); Letter from BarretteWood and EACOM to the Department, “Scope Comments for Bed-Frame Components Exclusion,” dated May 5, 2017 (BarretteWood and EACOM May 5, 2017 Scope Comments); Letter from Canfor to the Department, “Certain Softwood Lumber Products from Canada No. A-122-857 Comments on Proposed Scope Exclusions,” dated May 5, 2017 (Canfor May 5, 2017 Scope Comments); Letter from Central Canada and CIFQ to the Department, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – EWP,” dated May 5, 2017 (OFIA and CIFQ May 5, 2017 Scope Comments); Letter from CIFQ to the Department, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – I-Joists,” dated May 5, 2017 (CIFQ May 5, 2017 Scope Comments – I-Joists); Letter from CIFQ to the Department, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – Lumber Made From U.S. Origin Logs,” dated May 5, 2017 (CIFQ May 5, 2017 Scope Comments – U.S. Origin Logs); Letter from CIFQ to the Department, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – U.S. Origin Lumber Further Processed in Canada,” dated May 5, 2017 (CIFQ May 5, 2017 Scope Comments – Further Processed Lumber); Letter from GBC to the Department, “Certain Softwood Lumber Products from Canada: Scope Comments of the Government of British Columbia,” dated May 5, 2017 (GBC May 5, 2017 Scope Comments); Letter from GOC to the Department, “Certain Softwood Lumber Products from Canada: Comments on Proposed Scope Exclusions Currently under Consideration by the Department,” dated May 5, 2017 (GOC May 5, 2017 Scope Comments); Letter from GNS to the Department, “Certain Softwood Lumber from Canada: Scope Comments Requesting the Exclusion from the Antidumping and Countervailing Duty Investigations of ALB-Certified Softwood Lumber Products,” dated May 5, 2017 (GNS May 5, 2017 Scope Comments); Letter from IWPA to the Department, “Canadian Softwood Lumber Exclusion Request by Oregon-Canada Forest Products,” dated May 5, 2017 (IWPA May 5, 2017 Scope Comments); Letter from Matra to the Department, “Independent Comments on Scope to DOC Inv. Nos A-122-857 & C-122-858,” dated May 5, 2017 (Matra May 5, 2017 Scope Comments); Letter from OCFP to the Department, “Comments on OCFP’s Proposed Scope Exclusion Request Currently Under Consideration by the Department Certain Softwood Lumber Products from Canada,” dated May 5, 2017 (OCFP May 5, 2017 Scope Comments); Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Comments on Proposed Scope Exclusions,” dated May 5, 2017 (Petitioner May 5, 2017 Scope Comments); Letter from RILA to the Department, “Certain Softwood Lumber Products from Canada: RILA Scope Comments,” dated May 5, 2017 (RILA May 5, 2017 Scope Comments); Letter from TFP to the Department, “A-122-857/C-122-858: Certain Softwood Lumber Products from Canada: Additional Comments on Scope - Edge Glued Lumber,” dated May 5, 2017 (TFP May 5, 2017 Scope Comments); Letter from UFP to the Department, “Certain Softwood Lumber Products from Canada: Comments on Proposed Scope Exclusion for Bed Frame/Box Spring Components Submitted by UFP Westem Division, Inc. and UFP Eastem Division Inc. (A-122-857 & C-122-858),” dated May 5, 2017 (UFP May 5, 2017 Scope Comments); Letter from WFP to the Department, “Certain Softwood Lumber from Canada: Comments Regarding Proposed Exclusion of Certain WRC Products,” dated May 5, 2017 (WFP May 5, 2017 Scope Comments - WRC); Letter from WFP to the Department, “Certain Softwood Lumber from Canada: Comments Regarding Proposed Exclusion of Certain Yellow Cedar Products,” dated May 5, 2017 (WFP May 5, 2017 Scope Comments - Yellow Cedar).

¹³ See Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Amendment to the Petitions,” dated May 5, 2017 (Petitioner May 5, 2017 Petition Amendment).

¹⁴ See Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Response to Scope Comments Supplemental Questionnaire,” dated May 24, 2017 (Petitioner May 24, 2017 SQR).

Comment 10. Wood Shims

Comment 11. Fence Pickets and Fencing Materials

Comment 12. Truss Kits

Comment 13. Pallet Kits

Comment 14. Home Packages and Kits

Comment 15. Furniture Kits

Comment 16. Window and Door Frame Components

Comment 17. Flooring Products

Comment 18. Tongue and Grooved Products that are End-Matched

Comment 19. Tongue and Grooved Paneling

Comment 20. Certain Siding

Comment 21. Notched Stringers

Comment 22. Pre-Cut Bridging

Comment 23. Pre-Finished Products of a Certain Thickness

Comment 24. Ripped and Chopped Softwood Lumber Items

Comment 25. High-Value Finger-Jointed Pine Lumber

Comment 26. Landscape Ties

Comment 27. Western Red Cedar and Eastern White Pine

Comment 28. Yellow Cedar

Comment 29. Certain Products Made from Douglas Fir and Hemlock Trees

Comment 30. High-Value Products

Comment 31. Lumber Produced in Canada from U.S.-Origin Logs

Comment 32. Logs Harvested on First Nations Treaty or Private Lands

Comment 33. U.S. Entries under Temporary Import Bonds and Goods to be Exported

Comment 34. Bed-Frame Components and Crating Ladder Components

We are currently evaluating additional scope comments filed by interested parties and intend to issue final decisions regarding these comments in conjunction with the final determination of these investigations, which are due for signature on September 6, 2017.

SCOPE OF THE INVESTIGATIONS AS INITIATED BY THE DEPARTMENT

The merchandise covered by these investigations, as initiated by the Department, is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS).¹⁵ This chapter of the HTSUS covers “Wood and articles of wood.” Softwood lumber products that are subject to these investigations are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44:

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.

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.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

DEFINING THE SCOPE OF THE INVESTIGATIONS

The Department received a number of comments regarding the scope of these investigations. Numerous parties commented on the scope of the AD and CVD investigations initiated by the Department to argue that particular products are not within the scope of these investigations.

In addition to scope clarification requests, parties proposed numerous exclusions for products that would otherwise meet the physical description of products covered by scope of the investigations. Early in this proceeding, the Department urged interested parties to contact the petitioner to develop mutually agreed upon scope exclusions. For several products, parties did so, and have proposed such language to the Department. For a host of other products, the petitioner did not consent to a proposed exclusion, or indicated that the parties were still developing appropriate exclusion language.

Accordingly, in response to requests for scope clarifications and exclusions we have looked to the text of the scope of these investigations, as published in the *AD and CVD Initiation Notices*, information in the *Petition*, as amended, and the record of these investigations, to make preliminary scope determinations. Although the ultimate authority rests with the Department to define or clarify the scope of an investigation, as rule, the Department defers to the intent of the petition and fulfills the Department’s statutory mandate to provide, where appropriate, the relief requested by the petitioning industry.¹⁶ Thus,

¹⁵ Throughout this document, all references to the HTSUS are based on the HTSUS as it exists at <https://hts.usitc.gov/current>.
¹⁶ See, e.g., *Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7244, 7247 (February 18, 2010), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum (Lumber IV IDM) at “Scope Issues.”

“absent an overarching reason to modify the scope in the petition, the Department accepts {the scope}” as written.¹⁷ As the Court of Appeals for the Federal Circuit (CAFC) has explained, a “purpose of the petition is to propose an investigation,” while a “purpose of the investigation is to determine what merchandise should be included in the final order.”¹⁸ In defining the scope of an order, the CAFC has also explained that the Department has a “large” amount of discretion to determine “the appropriate scope” of an order to ensure that it “will be effective to remedy” the dumping or countervailing subsidies determined to exist during an investigation.¹⁹

Accordingly, the Department must take into consideration three primary concerns in determining whether or not to include particular products in the definition of the scope of an investigation and, subsequently, an AD and/or CVD order. First, the Department must ensure that the scope accurately reflects the products for which the petitioner seeks relief.²⁰ Second, the Department must provide interested parties with sufficient opportunity to present comments that can be evaluated by the Department, because once the scope of an order is published, with certain exceptions, that scope will apply for the life of the order.²¹ Finally, the Department must seek to ensure that the finalized scope is both administrable by CBP and not susceptible to circumvention and evasion.²²

In addition, there are scope-related requests we have not addressed in this memorandum. The petitioner has requested that the Department incorporate an exclusion for Atlantic Lumber Board (ALB)-certified lumber from both the AD and CVD investigations. In the alternative, the petitioner requested that the Department “exempt” ALB-certified lumber from the CVD investigation, similar to the treatment of such

¹⁷ 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 FR 51788, 51789 (September 5, 2008), unchanged in *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 4913 (January 28, 2009).

¹⁸ *Duferco Steel, Inc. v. United States*, 296 F. 3d 1087, 1089 (Fed. Cir. 2002).

¹⁹ *Mitsubishi Electric Corporation v. United States*, 898 F.3d 1577, 1583 (Fed. Cir. 1990) (*Mitsubishi II*). See also Senate Report on Trade Agreements Act of 1979, S. Rep. No. 96-249 (1979), at 45 (stating that “domestic petitioners and the administrators of the law have reasonable discretion to identify the most appropriate group of products for purposes of both the subsidy and injury investigations”).

²⁰ While the Department possesses the authority to determine the scope of the investigation, the Department’s standard practice is to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding. Thus, in establishing the scope of an investigation, the Department strives to craft a scope that both includes the specific products for which the petitioner has requested relief, and excludes those products which would otherwise fall within the general scope physical description, but for which the petitioner does not seek relief. See e.g., *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977, 33979 (June 16, 2008); *Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico*, 66 FR 26831, 26832-33 (May 15, 2001) (Spring Table Grapes).

²¹ See *Smith Corona Corp. v. United States*, 796 F. Supp. 1532, 1535 (CIT 1992) (*Smith Corona*); *Allegheny Bradford Com. v. United States*, 342 F. Supp. 2d 1172, 1187-88 (CIT 2004) (*Allegheny*); *Mitsubishi Electric Corporation v. United States*, 700 F. Supp. 538, 556 (CIT 1988) (*Mitsubishi I*), *aff’d* by *Mitsubishi II*, 898 F.3d at 1583 (finding that the Department “has the authority to define and/or clarify what constitutes the subject merchandise to be investigated as set forth in the petition ... taking into consideration such factors as ... the known tactics of foreign industries attempting to avoid a countervailing duty order”); *Torrington v. United States*, 745 F. Supp. 718, 721 (CIT 1990), *aff’d* 938 F.2d 1276 (Fed. Cir. 1991) (holding that in certain circumstances the Department may “narrow” the definition of the scope as proposed in a petition as long as such that modification is based on record evidence and not “unreasonable”; finding the existence of five classes or kinds of merchandise, rather than one, as alleged in the petition).

²² See, e.g., *Certain Steel Wheels from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

lumber in the Softwood Lumber Agreement (2006 SLA)²³ and *Lumber IV*.²⁴ The Department addressed these comments in a separate memorandum.²⁵

Furthermore, certain interested parties have requested in the CVD investigation specifically that the Department: (1) use a “first mill basis” approach to customs valuation for remanufactured lumber exports;²⁶ (2) implement a company-specific exclusion process;²⁷ and (3) exclude old/antique/recycled lumber (such as barnboard) from the CVD investigation based on the assertion that the lumber is sufficiently old such that it could not have benefitted from subsidies during the period of investigation (POI).²⁸ These three issues will be addressed in the companion CVD investigation, as they do not apply to the scope of the AD investigation. The Department addresses the parties’ remaining scope comments below.

Finally, this memorandum responds to the scope clarification and exclusion requests of various interested parties. To the extent that no party challenges certain preliminary determinations made in this memorandum, those particular scope determinations will be considered final upon the publication of the final determinations in these investigations.

SCOPE CLARIFICATION AND EXCLUSION REQUESTS

Comment 1: U.S.-Origin Lumber Undergoing Minor Processing in Canada

Petitioner and GOC Comments

- The Department should adopt additional scope language to exclude U.S.-origin lumber that undergoes minor processing in Canada from the scope these investigations. This exclusion would provide benefits to certain U.S. producers of softwood lumber without undermining the remedial effect of any order(s).

²³ See *Petition*, Volume I, at Exhibit 3 (containing the 2006 SLA).

²⁴ The Department notes that similar exclusionary language was adopted in the scopes of the prior orders covering softwood lumber from Canada, and in the 2006 SLA. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum; see also *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) and accompanying Issues and Decision Memorandum; see also *Petition*, Volume I, at Exhibit 3 (containing exclusionary language from the 2006 SLA in Annex 1A).

²⁵ See “Decision Memorandum for Exclusion of Certain Softwood Lumber Products Certified By the Atlantic Lumber Board in the Antidumping Duty and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada,” dated June 23, 2017 (ALB Decision Memorandum) where the Department preliminarily excluded from the scope softwood lumber products certified by the ALB as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in these three provinces. However, as noted in the ALB Decision Memorandum, CBP has not yet begun collecting ALB certifications, and the Department needs assurance that CBP will have a system in place to collect the certifications before we permit these products to be excluded. Thus, CBP will continue to suspend liquidation of entries of merchandise subject to the CVD investigation, and we will instruct CBP to begin suspension of liquidation of merchandise subject to this investigation. If there are no changes to the preliminary decision to exclude this merchandise, at the final determination, the Department will instruct CBP to stop suspension of liquidation of the merchandise subject to the exclusion and to refund cash deposits.

²⁶ See GOC May 5, 2017 Scope Comments at 22. The GOC argues that independent remanufacturers do not receive any of the alleged stumpage subsidies or any other alleged subsidies provided to dimension lumber producers, and remanufacturers should therefore receive a separate “all-others” rate.

²⁷ See GOC May 5, 2017 Scope Comments at 5-6.

²⁸ See *Petitioner* January 19, 2017 Scope Comments at 36.

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- Following a discussion with the Department,²⁹ the petitioner and the GOC proposed adding the following exclusionary language to the scope: “U.S.-origin lumber shipped to Canada for processing and imported into the United States is excluded from the scope of the investigations if the processing occurring in Canada is limited to one or more of the following: (1) kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.”³⁰

CIFQ and Matra Comments

- The exclusion proposed by the petitioner and the GOC is too narrow to effectuate its intended purpose, and the Department should expand the definition of further processing. Specifically, the following language should be added to the scope: “U.S.-origin lumber shipped to Canada for processing and imported into {the} United States is excluded from the scope of the investigations if the processing in Canada is limited to one or more of the following, whether primed, treated or not: (1) kiln drying; (2) planing to create smooth-to-size board; (3) sanding; (4) profiling along any of its edges, ends or faces; or (5) finger jointing (6mm joints).”³¹
- The slightly expanded language proposed by CIFQ and Matra would preserve the market for U.S.-origin lumber sent to Canada to be further processed into ready-to-assemble components, such as doors and windows components, without undermining the remedial effect of the orders.
- The above language would allow remanufacturers such as CIFQ member, Matra, to continue to purchase large volumes of lumber from U.S. sawmills. Without such an exclusion, the impact of an AD and/or CVD order would be to put these products made from U.S. lumber at a competitive disadvantage vis-à-vis imports of door and window components from third countries that do not use U.S.-origin lumber. Such a result would be to the detriment of U.S. sawmills.

Department Position

The petitioner and the GOC proposed agreed upon language to exclude U.S.-origin lumber that has undergone limited processing in Canada from the scope of these investigations. The proposed language set forth a specific set of processing steps that may be carried out in Canada without altering the U.S.-origin status of the lumber. The Department has preliminarily adopted the proposed scope language proposed by the petitioner and the GOC, as reflected in Attachment I of this memorandum.³² However, should interested parties, including the petitioner, agree to expand the scope of this exclusion in the manner described by CIFQ and Matra, the Department would consider modifying the exclusionary language for the final determinations to reflect the agreed upon language provided the Department has sufficient time to do so.

Comment 2: Other U.S.-Origin Lumber

GOC Comments

- All softwood lumber products entered claiming “non-subject status” based on U.S. country of origin should be excluded from the scope of these investigations, provided that these softwood

²⁹ See Memorandum, “Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language,” dated April 26, 2017.

³⁰ See Petitioner April 17, 2017 Scope Comments at 5-6.

³¹ See CIFQ May 5, 2017 Scope Comments; Matra May 5, 2017 Scope Comments at 1-2.

³² The Department notes that similar exclusionary language was adopted in the scopes of the prior orders covering softwood lumber from Canada, and in the 2006 SLA. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum; see also *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada* 67 FR 15545 (April 2, 2002) and accompanying Issues and Decision Memorandum (collectively, cited as *Lumber IV*); see also *Petition*, Volume I, at Exhibit 3 (containing exclusionary language from the 2006 SLA in Annex 1A).

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lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to the satisfaction of CBP 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 investigation/order scope.

Petitioner Comments

- The petitioner does not understand the GOC's exclusion request regarding "non-subject status" lumber. To the extent that this request is coextensive with the request concerning lumber undergoing limited processing, the petitioner supports such an exclusion. If this request differs from the limited processing request, however, the petitioner would be willing to further discuss an applicable exclusion.

Department Position

The GOC requests that the Department adopt exclusionary language to provide that lumber of U.S. origin be exempted from the scope of these investigations when the lumber was "first produced in the United States," and upon entering Canada constituted in-scope lumber, before subsequently being exported to the United States. The Department will not exclude products meeting this description for this preliminary determination.

Although the GOC provides limited details as part of its request, the GOC references the language contained in the *2006 SLA*, which stated that "all Softwood Lumber Products entered claiming non-subject status based on U.S. country of origin shall be treated as excluded under the *2006 SLA*, 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 CBP'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."³³ As described by the GOC, the product covered by this exclusion request "does not include lumber produced in Canada, but instead involves value added to lumber produced in the United States."³⁴ Given this description, it appears that the GOC is requesting an exclusion for any lumber of U.S. origin lumber, regardless of the level of processing undergone in Canada and regardless of whether or not the product is transformed in Canada into a different product that continues to fall within the scope of these investigations.

The Department declines to exclude such products from the scope for this preliminary determination. As an initial matter, the Department has already identified, as explained in the preceding comment, that U.S.-origin lumber shipped to Canada for processing and subsequently imported into United States is excluded from the scope of these investigations if the processing in Canada is limited to one or more of the following: (1) kiln drying; (2) planning to create smooth-to-size board; or (3) sanding. To the extent that U.S.-origin lumber undergoes processing beyond these steps, the Department will not adopt a blanket position that such lumber is outside the scope of these investigations. The Department has a developed approach to determining the country of origin for merchandise, and these analyses are applied on a product-specific basis (*e.g.*, in the majority of cases, in the context of the "substantial transformation" test). In fact, related exclusionary language contained in the *Lumber IV* investigation explicitly stated that "[t]he presumption of non-subject status can, however, be rebutted by evidence demonstrating that the

³³ See *Petition*, Volume I, at Exhibit 3 (containing exclusionary language in the *2006 SLA*).

³⁴ See GOC January 9, 2017 Scope Comments at 22.

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merchandise was substantially transformed in Canada.³⁵ Given these considerations, and a lack of clear agreement from the petitioner as to which parameters of this exclusion request the petitioner would find appropriate, the Department will not adopt the GOC's requested exclusion for this preliminary determination. Again, if the GOC and the petitioner come to agreement on specific exclusionary language, the Department would consider adopting the language, provided the Department has sufficient time to do so.

Comment 3: Scope Definition Based on HTSUS Classifications

RILA Comments

- The Department should improve the clarity and predictability of the scope by adding an exclusion for products properly classified under any chapter of the HTSUS other than Chapter 44, consistent with, for example, the scope language exclusion for “properly classified furniture” in *Lumber IV*.
- The scope as written in the initiation notice is ambiguous. The scope begins by stating that “{t}he merchandise covered by this investigation is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products).” Additionally, the scope covers components or parts of semi-finished or unassembled finished products made from subject merchandise, but does not indicate precisely what kinds of semi-finished or unassembled finished products are considered subject to these investigations. It is conceivable that such language could be read to include furniture, furniture parts and any number of other products with softwood plywood components that are classifiable under chapters other than Chapter 44 of the HTSUS.
- On the other hand, the scope language in the initiation notice states that “{s}oftwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44,” although the standard Departmental language indicating that the HTSUS classifications are not “dispositive” is included.
- Although the foregoing language suggests that products properly classifiable under chapters other than Chapter 44 are not subject to the investigation, neither the petitioner nor the Department has made an express exclusion for products classified as such.
- The CAFC has determined that “providing coherent and consistent guidance to regulated parties” on scope issues “should receive the highest priority” from the Department.³⁶
- In other AD and CVD proceedings, the lack of clarity in scope descriptions has led to the significant expansion of products subject to an order, going far beyond what was initially anticipated. The most relevant example is the Aluminum Extrusions from China Orders, where the Department has received almost one hundred scope ruling requests and has faced multiple appeals to the Court of International Trade (CIT).³⁷
- The HTSUS is organized pursuant to a well-designed structure starting with articles that have undergone no manufacturing or processing, and moving on to highly-processed articles. While the Department is reluctant to refer to HTSUS numbers when defining the scope of its investigations, here is a case where CBP has long experience in deciding whether goods belong in one chapter of the HTSUS or another.

Interested Parties

³⁵ See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 71 FR 2189, 2090 (January 13, 2006).

³⁶ See RILA January 9, 2017 Scope Comments at 3 (citing *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1305-56 (Fed. Cir. 2013)).

³⁷ See RILA January 9, 2017 Scope Comments at 3 (citing *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521, 18521-22 (Apr. 4, 2011); *Aluminum Extrusions from the People's Republic of China: Final Determinations of Sales at Less Than Fair Value*, 76 FR 18524, 18525-26 (Apr. 4, 2011)).

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- Numerous parties, including the GOC, have stated that certain products are not covered by the scope based on their HTSUS classification.

Petitioner Comments

- The Department has warned against defining scopes and scope exclusions purely through reference to HTSUS subheadings.³⁸
- Many of the scope exclusions and clarifications proposed by the parties do not contain clear physical descriptions or rely entirely on HTSUS codes to define the merchandise.

Department Position

The Department disagrees with RILA's contention that the scope should be defined in terms of HTSUS chapters and subheadings, and that the HTSUS chapters and subheadings should be dispositive in determining what products are covered. As the Department explained in past cases:

{I}t is important for {scope} exclusions to include descriptions of the products in question, instead of relying only upon references to HTSUS subcategory numbers. The Department references HTSUS categories for convenience and customs purposes only, and such references are not intended to be dispositive of the scope. The Department's preference to rely on the physical description of the merchandise to determine the scope of an investigation provides greater clarity should there be future HTSUS number or categorization changes, and allows better enforcement of any order.³⁹

Given these considerations, the Department has determined that it will treat the scope of these investigations no differently from the scope of other AD and CVD investigations, and will rely primarily on the physical description of the merchandise should an apparent conflict between the HTSUS numbers listed and the physical descriptions of the merchandise arise.

The Department recognizes that many of the parties expressed concerns that the scope upon which the Department initiated is ambiguous with respect to the status of finished products. In light of those expressed concerns, the Department has provided clarification with respect to "finished products" below and, recognizing enforcement and administration concerns with the language of the current scope, we have proposed modifications to the text to address those concerns.

Comment 4: Products Not Covered by Prior Softwood Lumber Proceedings

GOC Comments

- The Department should adopt exclusions that the Department adopted in *Lumber IV* and that were agreed to in the *2006 SLA*.
- Given the Department's extensive reliance in the preliminary determination in the CVD investigation on findings and reasoning from *Lumber IV*, it would be appropriate to apply the findings and reasoning relating to the *Lumber IV* scope to these investigations. Additionally,

³⁸ See Petitioner January 19, 2017 Scope Comments at 4 (citing *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28,958 (May 20, 2015) and accompanying Issues and Decision Memorandum at 3 (Nails from Oman IDM)).

³⁹ See Nails from Oman IDM at 3. The CIT has held that it "agrees with" the Department that "HTSUS item numbers do not define the scope, rather the scope's written description is dispositive of its coverage." *Power Train Components, Inc. v. United States*, 911 F. Supp. 2d 1338, 1345 (CIT 2013), *aff'd* 565 F. App'x 899 (Fed. Cir. 2014) (internal quotes omitted) (*Powertrain*). The CAFC has also indicated that pursuant to its precedent, "a reference to an HTSUS number is not dispositive about the scope of an antidumping or countervailing-duty order." *Novosteel SA v. United States*, 284 F. 3d 1261, 1270 (Fed. Cir. 2002) (*Novosteel*).

many products covered by the current scope were not subject to previous investigations and have, in many cases, never been subject to duties or managed trade.

- The petitioner opposes a number of interested parties' proposed scope exclusions in these investigations, citing concerns of potential circumvention. However, the *Lumber IV* and *2006 SLA* experiences make clear that the petitioner's concerns about potential circumvention and administrability problems are largely unfounded.

NBLP Comments

- The following products were not covered by *Lumber IV* or the *2006 SLA*:
 - Prefabricated home kits
 - Pallets and pallet kits
 - I-Joist beams
 - Trusses and truss kits
 - Edge-glued wood
 - Notched stringers
 - Lumber produced in the United States and shipped to Canada for minor processing
 - Fence pickets

Department Position

The Department will not adopt scope exclusions simply based on a product's status in the earlier softwood lumber proceedings or under the *2006 SLA*. The scope coverage of *Lumber IV* or the *2006 SLA* is not determinative of the scope of these investigations. The Department has initiated these investigations and the International Trade Commission (ITC) has made positive preliminary determinations based on the products covered by the scope of these investigations as initiated by the Department. As noted above, absent approval by the petitioner, administrability concerns, or concerns about possible future circumvention or evasion, it is not the Department's practice to modify the scope in the *Petition*.

With respect to the exclusion process more generally, if the *Petition* identifies a particular product as covered by the scope of an investigation, during the course of the investigation the Department will give substantial deference to the petitioner to determine whether a product-based exclusion is appropriate, and to identify the physical description of that product. It is the petitioner that is the party alleged to be harmed by the dumping or subsidization of merchandise, and therefore, the GOC's assertion that the petitioner's concerns regarding circumvention are unfounded does not factor into our determination of whether a covered product should be included or excluded from the scope of an investigation or a resulting order.

With regard to NLBP's comments, we have determined that a number of the products for which NBLP requested an exclusion are outside the scope of these investigations or the subject of an agreed upon exclusion, while other products are clearly covered by the scope. However, we emphasize that none of these determinations were based on whether the products were covered by *Lumber IV* and/or the *2006 SLA*.

Comment 5: The "May Also Be Classified" Clause of the Scope

GOC Comments

- The petitioner has recognized that finished products made from subject merchandise are out of scope, while the current scope covers "{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.”

- The language that subject merchandise 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 their corresponding HTSUS subheadings – added by the petitioner to address potential circumvention concerns – creates confusion and will necessitate numerous requests for express exclusions.
- The General Rules of Interpretation that govern the HTSUS make clear that an “incomplete or unfinished article” may be classified under a HTSUS code for a finished product only if it “has the essential character of the complete or finished article.”⁴⁰ Thus, the language under consideration is unnecessary.

Petitioner Comments

- As evident from the plain meaning of the “may also be classified” language in the scope, the purpose of the description is to identify possible products that may be within the scope of these investigations. Such language is necessary to address issues of circumvention, and inclusion of such language is common in AD and CVD scopes.
- Such descriptions are common in AD and CVD proceedings because tariff classifications are provided only for convenience and not dispositive. Because the written description is dispositive, CBP may be required to examine additional possible HTSUS subheadings to determine if a product is within the scope. As such, the Department should not remove the language from the scope.

Department Position

The Department does not agree with the GOC’s concerns or interpretation of the scope language at issue, and will retain the “may also be classified” language in the scope of the investigations. The language to which the GOC objects is intended to emphasize that the scope covers products covered by the written description of the scope, regardless of how CBP classifies the items. The language does not imply that finished products are more generally covered by the scope. Rather, the language illustrates that certain components, such as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts, are covered *if they meet the description contained in the preceding paragraphs of the scope*.

The GOC has argued that CBP’s HTSUS classification rulings should govern what is covered by the scope of these investigations when there is disagreement between CBP rulings and the written description of the scope of the investigations. As we have explained, we disagree. It is the language of the written scope, not the HTSUS classifications, which is dispositive in determining what is covered by the scope of these investigations. Indeed, this position is often restated by CBP, which in issuing its HTSUS rulings, emphasizes that its classification decisions are not binding with regard to whether a product is covered by AD and CVD proceedings.⁴¹ Furthermore, as noted above, the Department’s scope interpretation practice in this regard has also been affirmed as reasonable by the CIT and recognized by the CAFC as consistent with its precedent.⁴² Therefore, the Department will not remove the “may also be classified” clause from

⁴⁰ *Id.* (citing United States Harmonized Tariff Schedule General Rules of Interpretation 2(a), 19 U.S.C. §1202 (2017) (GRI)).

⁴¹ For example, in a 2008 scope ruling, CBP stated that its classifications and the Department’s scope analysis may differ and that the “{w}ritten decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection.” *See* CBP Ruling NY N021609 (January 25, 2008).

⁴² *See Powertrain*, 911 F. Supp. 2d at 1345; *Novosteel*, 284 F.3d at 1270.

the scope of the investigations as argued by the GOC. However, we proposed to the petitioner the following changes to the scope containing the “may also be classified” language.

“Subject merchandise as described above ~~may also be classified~~ *might be identified on entry documentation as* stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. *Items so identified might be entered* under the following ten-digit HTSUS subheadings in Chapter 44.”

The petitioner agreed to both changes⁴³ and the Department has preliminarily adopted the proposed scope language accepted by the petitioner, as reflected in Attachment I of this memorandum.

Comment 6: Finished Products

Canfor, Ikea, J.D. Irving, NBLP, RILA, TFP, Woodtone and GOC Comments

- The Department should clarify that certain “finished goods” are not within the scope of these investigations. A wide range of products identified by interested parties constitute finished goods, and therefore are not properly considered lumber.
- In particular, parties have identified the following items as finished goods that are outside the scope of these investigations: finished pallets; finished trusses; garage doors; door frames; window frames; I-joists,⁴⁴ open-webbed floor joists; edge-glued wood; cross-laminated timber; finished furniture; butcher block countertops; cutting boards; wood craft kits; fence pickets, wood shims, pre-painted decorative products, wood toys; wooden frames for paintings, photographs, and mirrors; wood blinds; clothes hangers; tableware; trays; wall art; and marquetry.⁴⁵

Petitioner Comments

- I-Joists, open-webbed floor joists, edge-glued lumber, and assembled pallets are finished products that are not within the scope of these investigations.
- In addition to the products enumerated above, finished goods more generally are not within the scope of these investigations. The definition of softwood lumber excludes a finished product that may “contain softwood lumber, but that ‘bears marks of its special adaptation’ as the finished product.”⁴⁶
- Despite the broad agreement that finished goods are out-of-scope, certain products that are identified as “finished” products by interested parties cannot be considered out of scope, because such products are indistinguishable from in-scope softwood lumber. For example, fence pickets and shims are products that are indistinguishable from subject merchandise, and are, thus, covered by the scope of these investigations.

⁴³ See Memorandum, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Change to Scope,” dated June 20, 2017.

⁴⁴ I-Joists may also be referred to as “I-Beams” or “I-Joist Beams.”

⁴⁵ See Ikea January 4, 2017 Scope Comments; Canfor January 4, 2017 Scope Comments; GOC January 4, 2017 Scope Comments; J.D. Irving January 4, 2017 Scope Comments; RILA January 4, 2017 Scope Comments; TFP January 4, 2017 Scope Comments; NBLP January 4, 2017 Scope Comments; CIFQ January 4, 2017 Scope Comments; Canfor April 3, 2017 Scope Comments; BarretteWood April 3, 2017 Scope Comments; CIFQ April 3, 2017 Scope Comments; GOC April 3, 2017 Scope Comments; J.D. Irving April 3, 2017 Scope Comments; RILA April 3, 2017 Scope Comments; Canfor May 5, 2017 Scope Comments; CIFQ May 5, 2017 Scope Comments; GOC May 5, 2017 Scope Comments; RILA May 5, 2017 Scope Comments; TFP May 5, 2017 Scope Comments.

⁴⁶ See Letter from the petitioner to the Department, “Supplement to the Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Response to the Department’s Supplemental Questions,” dated December 1, 2016 (Petitioner December 1, 2016 SQR).

Department Position

After consideration of the arguments and interpretations of the scope of the investigations presented by the various parties, including the petitioner, the Department preliminarily determines that “finished goods” are not covered by the scope of these investigations. The scope does not cover subject merchandise that: (1) has undergone sufficient processing such that the merchandise can no longer be considered an intermediate product; and (2) is able to be readily differentiated from subject merchandise.

As an initial matter, the petitioner has noted, on multiple occasions, that “finished goods” are not within the scope of these investigations. In response to a Department questionnaire, the petitioner explained that “actual ‘finished products’ made from subject merchandise are outside the scope.”⁴⁷ More specifically, the petitioner clarified that its definition of softwood lumber “excludes any finished product that may ‘contain softwood lumber, but that ‘bears marks of its special adaptation’ as the finished product.”⁴⁸ These claims are consistent with the petitioner’s explanation that, “{s}oftwood lumber is an intermediate product; it is almost always used to make something else.”⁴⁹

The Department finds that the majority of the products identified as “finished goods” by the parties – including assembled pallets; assembled trusses; assembled garage doors; assembled door frames; assembled window frames; assembled I-joists, open-webbed floor joists; edge-glued wood;⁵⁰ cross-laminated timber;⁵¹ assembled furniture; butcher block countertops; cutting boards; assembled wood toys; assembled wooden frames for paintings, photographs and mirrors; assembled wood blinds; clothes hangers; tableware; trays; wall art; and marquetry – have all been processed to such an extent that they are individually identifiable as “finished products.” Stated differently, we find that the level of processing is “significant and irreversible such that the risk of circumvention is insignificant.”⁵² These products, even if composed entirely or in part of softwood lumber, bear marks of special adaptation, and we believe they cannot reasonably be described as “intermediate goods.” Accordingly, these products were not intended to be covered by the scope of these investigations.⁵³ To be clear, these specifically-enumerated products do not constitute an exhaustive list of “finished goods” that would be considered non-subject

⁴⁷ See Petitioner December 1, 2016 SQR (noting that finished goods, unlike components or parts of semi-finished or unassembled products, are out of scope); Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Response to Comments on Scope,” dated January 9, 2017.

⁴⁸ See Petitioner December 1, 2016 SQR at 2 (quoting Customs Ruling HQ 963876 (Feb. 12, 2001) (quoting *Worthington v. Robbins*, 139 U.S. 337 (1891))).

⁴⁹ *Id.* at 1.

⁵⁰ The Department will remove the HTSUS category explicitly referencing edge-glued wood from the scope of these investigations.

⁵¹ The Department notes that the petitioner raised concerns regarding an appropriate definition for cross-laminated timber. The statements on the record indicate that a cross-laminated timber panel typically consists of 3 to 7 layers of wood that are stacked in alternating directions, bonded with structural adhesives, and pressed to form a solid straight, rectangular panel. See GOC January 9, 2017 Scope Comments at 17. The ultimate product is used as a load-bearing device. Although the GOC’s description of the product does not provide precision with respect to the number of layers or overall size of a cross-laminated timber panel, the description states that the wood components must be arranged in a particular manner, and bonded with structural adhesives. Given this high level of bonding between the component pieces of wood, the Department preliminarily determines that cross-laminated timber is sufficiently engineered such that it constitutes a finished good. Furthermore, the level of engineering required to construct a cross-laminated timber panel is such that the Department does not believe the product presents an avenue for circumvention (*e.g.*, by disassembling the product and selling the component parts).

⁵² See Petitioner May 26, 2017 SQR at 12.

⁵³ RILA also requested that “wood craft kits” be excluded from the scope of these investigations. See RILA January 4, 2017 Scope Comments at 6. However, without additional description of the product, the Department is unable to provide clarification regarding its scope status.

merchandise, but are merely referenced because these are the specific “finished goods” which have been specifically-identified by interested parties in these proceedings.

That being said, the Department is ultimately the administrator of the antidumping and countervailing duty laws, and CBP must administer our instructions at the border. Therefore, it is incumbent upon the Department to be certain that the scope of its investigations and orders are clear, can be administered, and that there are minimal concerns regarding evasion. We do not believe that the current scope of these investigations satisfies these requirements with regard to finished softwood lumber products. There is no reference to “finished goods” in the text of the scope, much less a description of that what term means. Accordingly, the current scope language provides CBP will little guidance as to whether “finished goods” are understood to be non-subject merchandise.

As explained above, the Department received a large number of comments from parties requesting explanation and modification to the scope to address which goods are considered subject merchandise and which products are considered “finished goods.” We agree that there is cause for concern given the current text of the scope of the investigations. Accordingly, the Department proposes adding the following language to the scope:

Finished products are not covered by the scope of these investigations. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to these investigations at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered “finished,” for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

We invite all parties, including the petitioner, to provide comments on this proposed addition to the language of the scope of the investigations. In providing commentary, please take into consideration the Department’s administration and enforcement concerns described in this memorandum.

Finally, we note that beyond the “finished products” listed above, there are several products that interested parties have referred to as “finished” which the Department did not include in the illustrative list of out-of-scope finished products above, such as wood shims and fence pickets. These products are not covered by the Department’s discussion of finished goods, for the reasons discussed separately below.

Comment 7: Pre-Painted Decorative Wood Products

Woodtone Comments

- Pre-painted decorative wood products should be excluded from the scope of these investigations. These products are “finished, non-structural wood products used in decorative, high visual quality appearance, applications on house interiors and exteriors.”⁵⁴
- Unlike the merchandise covered by these investigations, painted decorative wood products are: (1) covered on all sides with paint or stain; (2) used in decorative, non-structural applications; and (3) priced higher than standard dimensional lumber products.

Maibec Comments

⁵⁴ See Woodtone April 3, 2017 Scope Comments.

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- Pre-painted, or pre-stained, decorative wood products should be excluded from the scope of these investigations. Such products are non-structural wood products of high visual quality, used for decorative purposes on house interiors and exteriors.
 - Maibec believes that no alternative American-made finished product is currently on the market.

Petitioner Comments

- Woodtone’s reliance on the term “decorative” in describing its proposed exclusion inappropriately incorporates the concept of end-use application into scope considerations.
- Painting or staining a piece of softwood lumber is insufficient to render it a distinct, finished product that is no longer softwood lumber. Such merchandise falls clearly within the scope language, as drafted.

Department Position

The Department does not agree with Woodtone and Maibec that the characteristics of pre-painted decorative wood products support a finding that the merchandise is out-of-scope. The petitioner has indicated that it intended to include such a product within the scope of these investigations and the factors that Woodtone identifies as distinguishing features of the product in question do not differentiate the product from merchandise subject to these investigations.

Although Woodtone describes pre-painted decorative wood products as “finished,” the information on the record does not support an exclusion for these products. Woodtone explains that pre-painted decorative wood products are: (1) covered on all sides with paint or stain; (2) used in decorative, non-structural applications; and (3) priced higher than standard dimensional lumber products. Maibec similarly asserts that such merchandise is non-structural, of a high visual quality, and is comparatively expensive. None of these factors remove these products from the definition of softwood lumber subject to these investigations.

Although Maibec’s and Woodtone’s decorative wood products are pre-painted, this fact is immaterial to whether the merchandise is in-scope. The scope of the investigations does not indicate that painted (or stained or treated) lumber is not covered by the scope. Furthermore, although the written description of the scope is dispositive, the scope does explicitly note that merchandise subject to these investigations is properly classified in HTSUS Chapter 44. Chapter 44’s coverage of lumber products explicitly covers lumber products that have been painted.

With respect to the other characteristics of pre-painted decorative wood products, these similarly do not support a finding that the products are not in-scope softwood lumber. Although a large proportion of lumber sales are of structural-use lumber, the scope of these investigations, and numerous statements from the petitioner on the record of these proceedings, clearly indicate that the scope relates to lumber products beyond structural lumber.⁵⁵ The scope contains no language limiting the investigations to “structural lumber,” and explicitly covers non-structural products made of softwood lumber, such as flooring and siding. Additionally, the fact that pre-painted decorative wood products are typically higher in price than dimension lumber is immaterial, as the scope contains no criteria regarding wood products within a certain price range.

For these reasons, the Department finds that pre-painted decorative wood products are within the scope of these investigations. Accordingly, the products remain covered by these investigations.

⁵⁵ See Petitioner December 1, 2016 SQR; Petitioner January 19, 2017 Scope Comments.

West-Wood Comments

- The Department should clarify that moldings for completed windows fall outside of the scope of these investigations.⁵⁶ The Department should include scope language that precisely defines moldings.
- As noted in the scope published in the initiation of these investigations, the scope covers “{c}oniferous wood siding, flooring, and other coniferous wood (*other than moldings*).” For clarification purposes, the Department should explicitly state that “{f}inished attachments molded for window sashes, rails, or glass beads are ‘molding’ and, therefore, are not included in the scope of the investigation.”

The petitioner did not comment regarding West-Wood’s request for clarification that moldings are not covered by this scope.

Department Position

As noted by West-Wood, the plain language of the scope makes clear that moldings are not subject to the scope of these investigations. Additionally, the clarifying language proposed by West-Wood is based on end-use, rather than a description of the physical characteristics of the merchandise; therefore, the proposed language does not help to further clarify the definition of “moldings.”

The Department notes, however, that the term molding has a definition that is well understood for CBP’s purposes. Moldings have a distinct HTSUS heading within Chapter 44, and the notes to Chapter 44 of the HTSUS state that “{t}he term ‘standard wood moldings’ means wood moldings worked to a pattern and having the same profile in cross section throughout their length.” This definition is consistent with various dictionary/industry definitions of the term molding, as identified by the Department.⁵⁷ Moreover, there are numerous scope rulings related to moldings that demonstrate that CBP has a clear understanding of the types of products that constitute moldings.⁵⁸

We do not have detailed information concerning West-Wood’s “moldings,” and therefore cannot determine whether its particular merchandise is covered by the scope of these investigations. However, to the extent that its merchandise meets the definition of molding, as discussed above, the merchandise is explicitly excluded from the scope of these investigations.

Comment 9: Remanufactured Products

GOC Comments

- This case is principally about spruce-pine-fir (SPF) dimensional boards used in structural applications. Remanufactured products made from softwood lumber, rather than lumber processed from standing timber, are not the focus of the petitioner’s claims. Remanufactured

⁵⁶ See West-Wood April 3, 2017 Scope Comments.

⁵⁷ See Merriam-Webster.com (defining a molding as “a decorative recessed or relieved surface,” or alternatively, as “a decorative plane or curved strip used for ornamentation or finishing.”) *available at* <https://www.merriam-webster.com/dictionary/molding>; *see also* Dictionary.com (“{A}ny of various long, narrow, ornamental surfaces that are either continuous or discontinuous, with uniform cross sections for the full length and a strikingly modeled profile that casts strong shadows: used on frames, tables, etc., and certain architectural members, as cornices, stringcourses, or bases.”) *available at* <http://www.dictionary.com/browse/molding>; Lowes.com (“A narrow strip of wood shaped to a curved profile that’s used to accent and emphasize the ornamentation of a structure and to conceal surface or angle joints. Molding may be exterior or interior.”) *available at* <https://www.lowes.com/projects/build-and-remodel/moulding-glossary/project>.

⁵⁸ See, e.g., Customs Ruling NY K83258 (March 17, 2004); Customs Ruling NY N156535 (April 21, 2011).

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lumber constitutes a separate class or kind of merchandise that is entitled to its own subsidy rate if it remains within the scope of the investigations at all.

- Should the Department exclude from the scope specific types of softwood lumber, when such lumber is used to make remanufactured products, it is critical that the Department also exclude downstream finished products from the scope.

The petitioner did not comment on the GOC's argument regarding "remanufactured" products in general. However, the petitioner did comment with respect to several remanufactured products, as noted throughout this memorandum.

Department Position

The Department disagrees with the GOC's assertion that the scope of these investigations does not cover remanufactured products. The GOC summarily asserts that "many {remanufactured} products are a separate class or kind and should be investigated separately or not at all."⁵⁹ The GOC also asserts that such products are not within the scope of these investigations because dimension lumber used in structural applications is the focus of the petitioner's claims. However, remanufactured products are covered by the scope of the investigations, as detailed below.

As an initial matter, we note that, although dimension lumber constitutes a large proportion of softwood lumber imports, the petitioner explicitly included products that have undergone various levels of remanufacturing within the scope of these investigations.⁶⁰ Furthermore, numerous responses on the record of these proceedings clearly indicate that the scope covers lumber products beyond structural lumber.⁶¹

With respect to the GOC's assertion that remanufactured goods constitute a separate class or kind of merchandise, the Department's normal practice is to apply the *Diversified Products* factors to determine if a separate class or kind of merchandise exists in an investigation.⁶² However, the GOC has provided little argument and no facts on the record to permit the Department to conduct such an analysis with regard to remanufactured products more generally. On the other hand, for certain remanufactured products, particular interested parties did provide class or kind arguments with sufficient facts and arguments to permit such an analysis. Accordingly, where possible, the Department will address those arguments in the context of product-specific scope requests.⁶³

Comment 10: Wood Shims

J.D. Irving, NBLP and the GOC Comments

- Wood shims are finished wood products made for a specific purpose: wood shims are short, tapered strips of wood that are used to fill in gaps or spaces, such as in the installation of window and door frames, and to level a surface. The petitioner has clarified that the scope of these investigations is limited to intermediate products, and does not extend to finished products.

⁵⁹ See GOC May 5, 2017 Scope Comments.

⁶⁰ See Petitioner December 1, 2016 SQR; Petitioner January 19, 2017 Scope Comments.

⁶¹ See Petitioner December 1, 2016 SQR; Petitioner January 19, 2017 Scope Comments.

⁶² See Lumber IV AD Decision Memorandum at "Scope Issues."

⁶³ The GOC also asserts that the Department should establish a separate "all-others" rate for independent remanufacturers. See GOC May 5, 2017 Scope Comments at 14-15. The GOC argues that independent remanufacturers do not receive any of the alleged stumpage subsidies or any other alleged subsidies provided to dimension lumber producers, and remanufacturers should therefore receive a separate "all-others" rate. Additionally, the GOC asserts that CBP should assess any duties on remanufactured products produced by independent remanufacturers on a "first mill" basis. As noted above, these arguments will be addressed in the companion CVD proceeding.

Because wood shims are finished products, the scope description should be amended to clarify that wood shims are excluded from the scope.

- Wood shims are not identified in the scope description. Although the scope covers coniferous wood of an actual thickness exceeding six millimeters, wood shims are tapered, and therefore do not have a consistent thickness exceeding six millimeters.
- The Department should adopt an exclusion for wood shims meeting the following characteristics: (1) tapered strips of wood, commonly used to fill in gaps or spaces in the installation of windows or doors; (2) of species Eastern White Cedar (*Thuja occidentalis*); in (3) nominal lengths of 8” or 16”; (4) and with actual thicknesses ranging from 1/8” to 3/8” at the thick end and 1/32” to 1/16” at the thin end.

Petitioner Comments

- J.D. Irving and the NLBP have provided an ambiguous definition of the proposed exclusion and have failed to explain how such a definition would be adequate to prevent circumvention. If appropriate language was submitted by the parties, the petitioner would consider an exclusion for wood shims.

Department Position

The Department preliminarily finds that wood shims, as described by the interested parties, are covered by the scope of these investigations. We also determine that a scope exclusion, as articulated by the interested parties, is inappropriate for this preliminary determination.

The scope covers “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.” J.D. Irving asserts that “{b}ecause wood shims are tapered, they do not have a consistent ‘thickness exceeding six millimeters’” and are therefore out of scope.⁶⁴ However, the scope language does not provide that subject merchandise must be of a consistent thickness of greater than 6 millimeters. Accordingly, the language itself does not support a determination that wood shims are not covered by the scope of the investigations.

Furthermore, wood shims, even when they constitute a finished product, cannot be readily distinguished from softwood lumber products that are covered by the written description of the scope. For these reasons, we preliminarily do not find that this product should be excluded from the scope of the investigations.

The Department also disagrees with J.D. Irving, the GOC, and NBLP that an exclusion is appropriate for wood shims. Specifically, because wood shims are subject to these investigations, and because the petitioner has not agreed to scope exclusion language, the Department will not implement a scope exclusion for wood shims.

Comment 11: Fence Pickets and Fencing Materials

GOC, GBC and NBLP Comments

- The Department should include an exclusion for fence pickets meeting the following description: pickets (1) requiring no further processing and properly classified under HTSUS 4421.90.70, (2) measuring 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and (3) having finials or decorative cuttings that clearly identify them as fence pickets. (4) In the case

⁶⁴ See J.D. Irving January 9, 2017 Scope Comments at 2.

of dog-eared fence pickets, the corners of the boards should be cut off to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 of an inch or more.

- Fence pickets differ in physical characteristics from dimension lumber. They are manufactured with decorative finishes, and cannot be used in structural applications. Fence pickets are also sold and marketed in a different fashion when compared to softwood lumber products.
- Fence pickets meeting the above criteria were excluded from the 2006 SLA, and the Department should adopt the same exclusion here.
- Additionally, “fencing material” meeting the following characteristics is outside the scope of these investigations: fencing material that: (1) is re-sawn face or smooth face; (2) measuring 7’ or shorter; (3) can be marked as fencing; (4) is non-structural and is used in decorative visual appearance applications; (5) measures 3’ to 7’ in length, and 4” to 6” in width, and is 1 1/4” or thinner.

Petitioner Comments

- The proposed language regarding fence pickets is ambiguous and it is not clear that such language would prevent circumvention. If appropriate language was submitted by the parties, the petitioner would consider an exclusion for fence pickets.

UFP Comments

- Fence pickets are not finished articles that are out-of-scope and are not eligible for an exclusion.
- An exclusion for fence pickets would allow subject boards of any length, and which may or may not have simply been trimmed or notched for duty evasion purposes, to avoid the antidumping and countervailing duties.

Department Position

The Department preliminarily determines that fence pickets and fencing materials, as described by interested parties, are covered by the scope of these investigations. We also determine that a scope exclusion for either of these products based on the proposed language is inappropriate.

Based on the description of fence pickets and fencing products contained in the comments from the GOC, GBC and NBLP, the Department determines that the merchandise described by the parties constitutes boards of lumber. As provided in the *AD* and *CVD Initiation Notices*, the scope covers “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters”; the scope also covers “{c}oniferous drilled and notched lumber and angle cut lumber.” Nothing in the description of the fence pickets or fencing material for which interested parties requested an exclusion indicates that such products are not covered by the scope of these investigations. Additionally, in the *Petition*, the petitioner explicitly covered “boards” which is the category of lumber that encompassed such products.⁶⁵ Furthermore, fence pickets or fencing materials do not necessarily have any special markings or cuts that would make them distinguishable as “finished products” or render them unsuitable for other uses. For these reasons, the Department finds that the scope of these investigations covers fence pickets and fencing materials.

The Department also disagrees with the GOC, GBC and NBLP that an exclusion is appropriate for fence pickets and fencing materials. The petitioner has not indicated its support for such an exclusion and the fact that an exclusion was adopted in a previous proceeding is immaterial.

Comment 12: Truss Kits

⁶⁵ See *Petition*, Volume I, at 21.

GOC and NBLP Comments

- 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 in applications other than trusses.
- The ultimate purchasers of truss kits do not expect to use them interchangeably with dimensional or framing lumber. Truss kits are ultimately assembled for their intended applications. The kits are not advertised or displayed as being interchangeable with dimensional or framing lumber.
- Truss kits were excluded from *Lumber IV* and the *2006 SLA* and no circumvention was encountered. This fact undermines the petitioner's reliance on circumvention concerns as the basis for its opposition to an exclusion for truss kits. Accordingly, truss kits should be excluded from the scope.
- Truss kits can be clearly and specifically described to eliminate circumvention concerns, and such details can alleviate concerns regarding the administrability of any exclusion adopted by the Department.

Petitioner Comments

- A truss kit exclusion may create an avenue for parties to circumvent any potential AD or CVD orders resulting from these investigations.
- For instance, in a 2007 CIT case, the Court noted that Millennium Lumber Distribution, Ltd., a U.S. importer of Canadian softwood lumber, attempted to import "angle cut lumber" as a truss kit. In affirming CBP's findings that the product should have been classified as softwood lumber, the court stated: "although it asserts that the merchandise was solely intended for use in wood trusses, Millennium admits that the wood could be used by purchasers as an alternate source of lumber through re-cutting for other purposes subsequent to importation."⁶⁶
- Therefore, the Department should not grant the requested exclusion until a precise definition is formulated to address such circumvention issues.

UFP Comments

- The Department should decline to adopt an exclusion for truss kits, and the scope should explicitly state that truss components are covered.
- UFP is not aware of any market for "truss kits," as legitimate builders and their retail lumber yards require assembled trusses. A "truss kit" exclusion would likely facilitate circumvention.

Department Position

The Department preliminarily determines that truss kits, as described by interested parties, are covered by the scope of these investigations. We also determine that a scope exclusion for such merchandise is inappropriate for this preliminary determination.

A typical truss kit consists of SPF dimensional boards and metal plates that bind the pieces of lumber into place.⁶⁷ Despite claiming that truss components have special markings or cuts that render them unsuitable for use other than in assembling trusses, the GOC has not cited to any evidence in this regard. Moreover, there is no evidence that the softwood lumber that is the primary component of a truss kit is unusable in a myriad of other applications. While the lumber components of a truss may be angle cut to permit the attachment of other lumber and locking components, the scope of these investigations explicitly covers

⁶⁶ See Petitioner January 19, 2017 Scope Comments at 20 and Exhibit 7 (citing *Millennium Lumber Distribution, Ltd. v. United States*, Slip Op. 07-56, Court No. 02-595 at 13 (CIT 2007)).

⁶⁷ See, e.g., "Truss Basics," at <http://www.statesvilletruss.co/uploads/3/2/0/4/3204178/truss2007book.pdf> included as Attachment II.

angle cut lumber. In addition, the scope explicitly covers lumber that has undergone limited processing, such as lumber that has been drilled and notched. The scope also covers semi-finished or unassembled finished products to the extent those products meet the narrative description of subject merchandise. Finally, the scope covers softwood lumber that may be classified by CBP as truss components. Thus, the Department finds that truss kits contain minimally-processed lumber that is explicitly covered by the scope.

With regard to the treatment of truss kits in *Lumber IV* and the *2006 SLA*, whether or not a product was covered by a prior proceeding or the *2006 SLA* is not determinative of the scope of these investigations. We determine that, to the extent a truss kit consists of softwood lumber, it is covered by the scope.

Finally, with regard to interested parties' exclusion request, the petitioner has not indicated its support for an exclusion of truss kits or components from the scope of the investigations. Therefore, we are not granting an exclusion for truss kits for this preliminary determination.

Comment 13: Pallet Kits

GOC and NBLP Comments

- Pallet kits are not in scope merchandise.
- Pallet kits were excluded from *Lumber IV* and the *2006 SLA*, and no circumvention was encountered. This fact undermines the petitioner's reliance on circumvention concerns in opposing an exclusion for pallet kits. Pallet kits should be excluded from the scope.
- Further reducing circumvention concerns is the fact that imports of pallets declined during the period of 2001 through 2006 – which was the period covered by the previous AD and CVD softwood lumber investigations and the resulting orders – relative to imports during the 1998-2000 period.
- To be properly classified in HTSUS subheading 4415.20, pallet kits must satisfy the requirements of GRI 2(a), 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.”
- 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 instance, CBP has ruled that an entry which the importer identified as a pallet kit could not be classified as a pallet because “{u}nlike the boards in question, in {other CBP rulings relied upon by the importer} the deckboards are thinner than the runners, and in no case do they exceed 1” in thickness.” Such a nuanced reading of the definition of a pallet, indicates that CBP implements a stringent definition for an entry to constitute a pallet.⁶⁸
- Due to the rigorous measures CBP takes to ensure that only legitimate pallet kits be classified as such, the petitioner should not be concerned that a scope exclusion for pallets creates opportunities for circumvention.

RILA and GBC Comments

- Pallet kits should be excluded from the scope of these investigations.

Petitioner Comments

- Unassembled pallets or “pallet kits” would appear to simply be a collection of unassembled pallet components sufficient to make a pallet, rather than an actual finished, assembled pallet. Pallet kits, therefore, are within the scope.

⁶⁸ See GOC January 9, 2017 Scope Comments at 13 (citing Customs Ruling HQ 965460 (Sept. 5, 2002)).

UFP Comments

- The Department should not adopt an exclusion for pallet kits, and the scope should explicitly state that pallet kits are covered.
- UFP is unaware of any market for “pallet kits”; a kit exclusion would create an avenue for circumventing the scope of these investigations. Legitimate consumers want finished pallets, rather than kits.
- Pallet kits are not finished products and should not be excluded. In UFP’s experience, there is no discernable difference between so-called “pallet kits” and pallet components or stock, making such an exclusion difficult to enforce by CBP.

Department Position

The Department preliminarily determines that pallet kits, as described by interested parties, are covered by the scope of these investigations. We also determine that a scope exclusion is inappropriate for this preliminary determination.

A pallet is a relatively simple item consisting of pieces of softwood SPF dimensional board lumber nailed together. Thus, a pallet kit consists of softwood dimensional lumber, with some of the lumber notched, and nails. Pallet components would not appear to have any special markings or cuts that render them unsuitable for other uses. Additionally, the scope of these investigations covers lumber that has undergone processing, such as notched softwood lumber. The scope further covers semi-finished or unassembled finished products. Thus, the scope has been drafted by the petitioner to cover unassembled pallets. In fact, the scope states that it covers softwood lumber that may be classified by CBP as pallet components. Thus, to the extent that a pallet kit consists of softwood lumber, it is covered by the scope of these investigations.

In arguing that pallet kits are not covered by the scope of the investigations, the GOC relies heavily on CBP rulings and its interpretations of the relevant HTSUS headings. However, it is the written scope, not HTSUS classifications, that is dispositive in determining scope coverage. The Department is not bound by CBP’s HTSUS classifications. In fact, in issuing its HTSUS classification rulings, CBP often emphasizes that its classification decisions are not binding with respect to whether a product is covered by an AD/CVD investigation or order.⁶⁹ Furthermore, as noted above, the Department’s scope interpretation practice in this regard has also been affirmed as reasonable by the CIT and recognized by the CAFC as consistent with its precedent.⁷⁰ Thus, regardless of whether pallet kits are classified as pallets under the HTSUS, the Department determines whether products are covered based on the language of the scope, information contained in the amended *Petition*, and all other information provided throughout the investigations.

We also disagree with the GOC that the treatment of pallet kits in *Lumber IV* and in the *2006 SLA* is determinative of whether or not a product is excluded from the scope of these proceedings. It is not. The petitioner has not indicated that it supports excluding this product from the scope of the investigations. Accordingly, the Department preliminarily determines that an exclusion is not warranted for pallet kits.

⁶⁹ For example, in a 2008 scope ruling, CBP stated that its classifications and the Department’s scope decisions may differ; CBP explained that the “[w]ritten decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection.” See Customs Ruling NY N021609 (January 25, 2008).

⁷⁰ See *Powertrain*, 911 F. Supp. 2d at 1345; *Novosteel*, 284 F.3d at 1270.

Comment 14: Home Packages and Kits*GOC and NBLP Comments*

- Home packages and kits should be excluded from the scope of these investigations.
- Home packages and kits were excluded from *Lumber IV* and the *2006 SLA* and no circumvention was encountered. This fact undermines the petitioner's reliance on circumvention concerns in opposing an exclusion for home kits.

Petitioner Comments

- Neither the GOC nor the NBLP have explained why an exclusion for these products is justified for these investigations, and, indeed, the company that originally requested the exclusion in 2001 has not renewed its request in these proceedings.
- A home kit exclusion may create a way to circumvent any potential AD and CVD orders issued as a result of these investigations.
- Prior experience with home kit imports supports the petitioner's concerns regarding circumvention. For instance, in a 2008 CBP ruling, CBP found that two home kits did not qualify as "prefabricated buildings" because they consisted of "merely materials which will be used to construct the home"; CBP observed that "a conglomeration of materials shipped together does not become a prefabricated building simply by packing them together." CBP further inspected the building site for one of the home kits, and found that the lumber present "was not recognizable as part of a specific prefabricated home, but was merely general sawn lumber in a quantity that would be used to build the home." Consequently, all materials in those home kits were "classifiable separately under their applicable tariff provisions."⁷¹

UFP Comments

- UFP is not aware of any market for home kits and is unaware of any legitimate reason for importing the product. Such an exclusion would likely facilitate circumvention.

Department Position

The Department preliminarily determines that home packages and kits, as described by interested parties, are covered by the scope of these investigations. We also preliminarily determine that a scope exclusion for these kits is inappropriate.

While parties have argued for an exclusion for home packages and kits, they have not argued that home packages and kits are outside the scope of these investigations. These kits are covered as they consist primarily of pieces of softwood lumber that do not have any special markings or cuts that would make them unsuitable for other applications of unfinished softwood lumber. In fact, the ITC has stated that "{d}emand for softwood lumber is derived primarily from demand for residential construction activity," which is precisely what these kits are used for.⁷² Thus, to the extent the lumber in a home package or kit consists of softwood lumber, it is covered by the scope.

With regard to the treatment of this product in *Lumber IV* and the *2006 SLA*, whether or not a product was covered by a prior proceeding or agreement is not determinative of the scope of these investigations. The petitioner has not indicated its support for an exclusion of home packages and kits from the scope of the

⁷¹ See Petitioner January 19, 2017 Scope Comments at 19 and Exhibit 6 (citing Customs Ruling HQ 962347 (Nov. 19, 2001) at 7-8).

⁷² See *Softwood Lumber Products from Canada*, Investigation. Nos. 701-TA-566 and 731-TA-1342, USITC Pub. No. 4663 at 28 (January 2017).

investigations. Therefore, we are not granting an exclusion for home packages and kits for this preliminary determination. [Barcode:3585482-01.A-122-857 INV - Investigation](#)

Comment 15: Finished Furniture Kits

IKEA and RILA Comments

- The ambiguous language in the current scope requires that the Department include exclusion language specifying that unassembled furniture, imported as a finished good kit, constitutes non-subject merchandise.

The petitioner did not comment regarding finished furniture kits.

Department Position

The Department preliminarily determines that finished furniture kits are not covered by the scope of these investigations.

As noted above, the petitioner has consistently stated that finished goods are not within the scope of these investigations.⁷³ We recognize that the term “finished goods” does not appear in the scope of the investigations and is not a defined term, and as we have explained above, we have proposed modifying the scope to provide clarification on this particular issue.

The petitioner has explained that it believes that softwood lumber covered by the scope of the investigations “excludes any finished product that may contain softwood lumber, but that ‘bears marks of its special adaptation’ as the finished product.”⁷⁴ These claims are consistent with the petitioner’s explanation that, “[s]oftwood lumber is an intermediate product; it is almost always used to make something else.”⁷⁵ Informed by these statements and our understanding of the scope, we preliminarily find that finished furniture kits are “finished goods” that are not covered by the scope of these investigations, provided that they have special markings, cuts, and finishes and have been otherwise engineered to such an extent that they would be unsuitable for any purpose other than their intended purpose.⁷⁶ This understanding of finished furniture kits is consistent with our analysis and conclusion in *Lumber IV*, where we determined that the only furniture parts covered by the scope were those “at a processing stage where they have not yet assumed the unique characteristics of a component of a specific item of furniture,” as “they may still be considered generic softwood lumber products and be covered by the scope of these investigations.”⁷⁷

In applying the above criteria to the finished furniture kits described by IKEA and RILA, the Department finds that such kits constitute finished goods rather than intermediate products, and thus are not covered by the scope. Unlike the home, truss, and pallet kits described above, which consist substantially of SPF dimensional boards that do not have special markings, cuts, or other engineering that would render them unsuitable in other applications, finished furniture kits contain components with a high level of processing. The components in a finished furniture kit, for instance, undergo numerous processes, such as cutting, drilling, painting, applications of varnish and other finishes, and other processing that render the components unsuitable in applications other than as a part of a piece of furniture. For a kit to be

⁷³ See Petitioner December 1, 2016 SQR (noting that finished goods, unlike components or parts of semi-finished or unassembled products, are outside the scope.); Letter from petitioner to the Department, “Certain Softwood Lumber Products from Canada: Response to Comments on Scope,” dated January 9, 2017.

⁷⁴ See Petitioner April 3, 2017 Scope Comments at 7 (quoting CBP Ruling HQ 963876 (Feb. 12, 2001) (quoting *Worthington v. Robbins*, 139 U.S. 337 (1891))).

⁷⁵ *Id.* at 1.

⁷⁶ See Petitioner May 26, 2017 SQR at 12.

⁷⁷ See GOC January 19, 2017 Scope Comments, Exhibit 1, at 193 (containing the Issues and Decision Memorandum from the Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada, dated March 21, 2002).

considered, assembly aside, a finished chair, bed, dresser, sofa, or other finished piece of furniture, it must contain wood components that have special markings, cuts, and finishes or otherwise have been engineered to such an extent that they would be unsuitable for any purpose other than as intended.

Components of finished furniture kits typically cannot be used to make something else. Furniture components can be distinguished from the components of truss kits, pallet kits, and home kits, which, as stated above, would consist primarily of unfinished softwood lumber. This distinction drives our determination that finished furniture kits are excluded from the scope, while the other three product kits described above are within scope.

Given that finished furniture kits are out-of-scope, the Department need not consider proposed language for an exclusion.

Comment 16: Window and Door Frame Components

GOC Comments

- Window frame and door frame components that are properly classified under HTSUS 4418.10 are excluded from the scope of these investigations.
- Window and door frame components feature physical characteristics, such as special markings or cuts, that render them suitable for use only in completed or finished products that are not dimensional or framing lumber.
- The 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.
- Window frame and door frame components are not sold through the same channels of trade as dimensional or framing lumber. Such components are not advertised or displayed as being interchangeable with dimensional or framing lumber.

UFP Comments

- Door-frame kits are not finished products and should not be excluded.
- UFP is unaware of any legitimate market for unassembled door frames.

Petitioner Comments

- Window and door frame components, as currently described by the GOC, are not clearly defined and rely entirely on tariff classification for a definition of the finished product.
- The GOC claims that window and door frame components feature physical characteristics, such as special markings or cuts, that render them suitable for use only in completed or finished products such that they are not dimensional or framing lumber. However, the GOC fails to precisely identify such distinguishing characteristics.
- Statements by the GOC regarding the ultimate purchasers, channels of trade, and the manner in which window and door frame components are advertised, are not supported by evidence and appear to be pure conjecture.
- Precise written scope exclusions that are not dependent on a tariff classification may address issues of circumvention. However, the Department should not grant such exclusions from the scope at this time.

Department Position

The Department preliminarily determines that window and door frame components, as described by interested parties, are covered by the scope of these investigations. We also determine that a scope exclusion is inappropriate for this preliminary determination.

With respect to window and door frame components, the GOC has provided limited details on the record regarding these components that it claims are not covered by the scope, other than the description of the items merely as “window and door frame components.”⁷⁸ This group of merchandise could include SPF dimensional boards used to build window or door frames, but could also potentially include merchandise which has been finished or processed and has special markings, cuts, or finishes or other special adaptations rendering it unusable for applications other than its intended use as a frame. Thus, although some window and door frame components might meet be considered “finished goods” under the petitioner’s understanding of that term, the GOC’s argument that window and door frame components always feature physical characteristics, such as special markings or cuts, that render them suitable for use only in completed window or door frames is not borne out by the limited facts on the administrative record. The GOC simply did not substantiate its claim that this product should be considered outside the scope of these investigations.

Aside from its vague description, the GOC relies on CBP classifications to define window and door frame components. Doing so ignores the text of the scope itself, which states that the written description in the scope, rather than HTSUS classifications, is dispositive in determining scope coverage. Additionally, the scope specifies that “door and window frame parts” meeting the description of the scope are covered, even when the subject merchandise may be classified by CBP as falling under the window and door frame HTSUS categories. As CBP often emphasizes, its classification decisions are not binding with respect to whether a product is covered in AD and CVD proceedings.⁷⁹ Therefore, the Department disagrees with the GOC that door and window frame components are outside of the scope of these investigations merely because they have been classified by CBP as door and window frame components.

To date, the petitioner has not supported the exclusion of door and window frame components from the scope of the investigations. Therefore, we are not excluding door and window frame components from the scope of these investigations.

Comment 17: Flooring Products

GOC Comments

- Products that have tongue and groove edges and are end-matched are outside the scope of these investigations. The end-matching for such products (*i.e.*, tongue and groove) should be visible all the way around the four edges of the product. Such products are 1’ to 12’ in length, 4” to 12” in width, and are 1” or thinner. These products are non-structural and are used in decorative, high visual quality appearance applications on house interiors.
- At its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses, rather than flooring products.

GBC Comments

- The GBC supports the comments submitted by the GOC.

The petitioner did not comment on this issue.

⁷⁸ See GOC January 9, 2017 Scope Comments at 19.

⁷⁹ For example, in a 2008 scope ruling CBP stated that its classifications and the Department’s scope analysis may differ and that the “{w}ritten decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection.” See CBP Ruling NY N021609 (January 25, 2008). See also *Powertrain*, 911 F. Supp. 2d at 1345 (affirming the Department’s interpretation of its scopes and reliance on the text of the scope itself rather than HTSUS classifications); *Novosteel*, 284 F.3d at 1270.

Department Position

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The Department preliminarily finds the products described above to be covered by the scope of the investigations. Furthermore, we will not grant an exclusion for the products for this preliminary determination.

The GOC claims that at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations explicitly covers “coniferous wood siding, flooring, and other coniferous wood.” The factors that the GOC identifies as distinguishing features of the products in question do not differentiate these products from softwood lumber covered by the scope of these investigations. The scope does not include an exclusion for the products described by the GOC; in fact, the plain language of the scope covers the flooring products described above.

Additionally, the petitioner has not supported an exclusion for the flooring products at issue. Accordingly, we are not granting an exclusion for flooring products for this preliminary determination.

Comment 18: Tongue and Grooved Products that are End-Matched

GOC Comments

- The following tongue and grooved paneling products are outside the scope of these investigations: Both re-sawn face and smooth face but with specific molded profiles: V2E (“V” Groove on 2 edges of one face) and V4E (“V” Groove on all 4 edges). In terms of dimensions, the products are 6’ to 20’ in length, 4” to 12” in width, and 5/4” (1 1/4”) or thinner. The products are end matched (tongue and groove), which is visible all the way around the four edges of the product.
- These products are non-structural and are used in decorative, high visual quality appearance applications on house interiors and exteriors.
- At its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses, rather than tongue and grooved paneling products that are end-matched.

GBC Comments

- The GBC supports the GOC’s comments.

The petitioner did not comment on this issue.

Department Position

The GOC claims that, at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations covers “coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces.” The factors that the GOC identifies as distinguishing features of the product in question do not differentiate the product from softwood lumber expressly covered by the scope of these investigations. Thus, the scope covers tongue and grooved products that are end-matched.

Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for tongue and grooved products that are end-matched. Therefore, we are not granting an exclusion for tongue and grooved products that are end matched for this preliminary determination.

Comment 19: Tongue and Grooved Paneling*GOC Comments*

- The following tongue and grooved paneling products are outside the scope of these investigations: Both re-sawn face and smooth face but with specific molded profiles: V2E (“V” Groove on 2 edges of one face) and V4E (“V” Groove on all 4 edges). In terms of dimensions, the products are 6’ to 20’ in length, 4” to 12” in width, and 5/4” (1 1/4”) or thinner.
- These products are non-structural and are used in decorative, high visual quality appearance applications on house interiors and exteriors.
- At its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses, rather than tongue and grooved paneling.

GBC Comments

- The GBC support the GOC’s comments.

The petitioner did not comment on this issue.

Department Position

The Department preliminarily finds the product described above to be covered by the scope of the investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that, at its core, the *Petition* concerns SPF dimension boards used in structural applications, such as framing houses; however, the scope of these investigations covers “{c}oniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces.” The factors that the GOC identifies as distinguishing features of the product in question do not differentiate the product from softwood lumber covered by the scope of these investigations, because the scope covers tongue and grooved products/paneling and does not exclude products on the basis of the dimensions specified by the GOC. Thus, the scope covers tongue and grooved paneling as described by the GOC.

Additionally, the petitioner has not supported an exclusion for tongue and grooved paneling. Therefore, we are not granting an exclusion for tongue and grooved paneling for this preliminary determination.

Comment 20: Certain Siding*GOC Comments*

- The following siding products are outside of the scope of these investigations: both resawn face products and smooth face products, but with specific molded profiles. For example: bevel, channel, and cove. In terms of dimensions, the products are 6’-20’ in length, 4” to 12” in width, and 5/4” (1 1/4”) or thinner.
- These products are non-structural and are used in decorative, high visual quality appearance applications on house interiors and exteriors.

GBC Comments

- The GBC Supports the GOC’s comments.

Department Position

The Department preliminarily finds the product described above to be covered by the scope of these investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that, at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations covers “{c}oniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces.” The factors that the GOC identifies as distinguishing features of the product in question do not differentiate the product from softwood lumber covered by the scope of these investigations because the scope explicitly covers siding and does not exclude products on the basis of the dimensions specified by the GOC. Thus, the scope covers certain siding as described by the GOC.

Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for the siding products described above. Therefore, we are not granting an exclusion for these siding products for this preliminary determination.

Comment 21: Notched Stringers

GOC Comments

- Notched stringers are outside the scope of these investigations. Notched stringers consist of a continuous, longitudinal pallet component with two notches (cut-outs) to facilitate partial four-way entry by lift truck tines. Notches for fork tine entry are approximately 9” in length, 1.25” to 1.75” in height, and spaced at a consistent inset from each end. Stringers can be from 30” to a maximum of 60” in length. Notched stringers can be from 1.125” to 3.5” in width.

NBLP Comments

- Consistent with *Lumber IV* and the *2006 SLA*, notched stringers should not be covered by the scope.

GBC Comments

- The GBC supports the GOC’s comments.

Petitioner and UFP Comments

- Pallet components are simply softwood lumber of different dimensions and grades. It is unclear how the proposed definition would address circumvention concerns, notwithstanding the GOC’s assertion that notched stringers “have no other use than as part of a completed pallet.” Moreover, the ultimate use does not change the fact that the product itself is unfinished “notched lumber” that the petitioner explicitly sought to include within the scope. Accordingly, the Department should not grant the requested exclusion.

Department Position

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The Department preliminarily finds the product described above to be covered by the scope of these investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations explicitly covers “{c}oniferous drilled and notched lumber and angle cut lumber.” The factors that the GOC identifies as distinguishing features of notched stringers do not differentiate those products from softwood lumber covered by the scope of these investigations because the scope explicitly covers notched lumber and does not exclude products on the basis of the dimensions specified by the GOC. Thus, the scope covers notched stringers as described by the GOC.

Additionally, the petitioner has not agreed to exclude the product discussed above. Therefore, we are not granting an exclusion for notched stringers.

Comment 22: Pre-Cut Bridging

GOC Comments

- Pre-cut bridging consisting of pieces of 1x3” wood ranging from 12-3/4” to 17-3/4” that is cut with an angle on each end to fit between floor joists is outside the scope of these investigations.
- HTSUS 4418.90 has been removed from the HTSUS since the *Petition* was filed. The HTS code should be removed from the scope description.

Petitioner Comments

- Despite the GOC’s claim that this product is manufactured for “specialized” use, the current definition makes no reference to any feature that would distinguish this product from the “angle cut lumber” that is subject to the scope of these investigations.
- The Department should not remove HTSUS subheading 4418.90.46.95 from the scope of these investigations. Although the HTSUS subheadings under Chapter 44 were amended as of January 1, 2017, this subheading was in effect during the POI and remains relevant to these investigations.

Department Position

The Department preliminarily finds pre-cut bridging to be covered by the scope of the investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations covers “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters” and explicitly notes that it covers “angle cut lumber.” The factors that the GOC identifies as distinguishing features of the pre-cut bridging in question do not differentiate it from the softwood lumber covered by the scope of these investigations. The GOC has cited nothing, and the Department can identify nothing, that would distinguish the pre-cut bridging cut with an angle on each end from the angle cut lumber expressly covered by the scope of these investigations. Thus, the pre-cut bridging described above is covered by the scope.

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Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for pre-cut bridging. Therefore, we are not granting an exclusion for pre-cut bridging for this preliminary determination.

With regard to whether HTSUS subheading 4418.90.46.95 should be listed in the scope, all parties agree, and the Department has confirmed, that this subheading no longer existed as of January 1, 2017. As we noted in the preliminary determination of critical circumstances, if we reach a positive final determination of critical circumstances, we will instruct CBP to suspend liquidation of all entries of subject merchandise 90 days prior to the preliminary determination.⁸⁰ Because the CVD preliminary determination was published on April 28, 2017,⁸¹ entries covered by any possible orders would not fall under HTSUS subheading 4418.90.46.95. Therefore, we have removed any reference to this HTSUS subheading from the scope.

Comment 23: Pre-Finished Products of a Certain Thickness

GOC Comments

- The following pre-finished products of a certain thickness are outside the scope of these investigations: pre-finished products with a primer, stain, or coating applied to all four finished sides of the product (2 faces and 2 edges). This would include siding, paneling, decking, and flooring that has any of the aforementioned coatings applied. This category should not include any pressure treated product, as that is not considered pre-finishing. In terms of dimensions, the products range from 6' to 20' in length, 4" to 12" in width, and are 5/4" or thinner.
- The products are non-structural and prefinished and therefore can only be used in decorative, high visual quality appearance applications on house interiors and exteriors.

GBC Comments

- The GBC supports the GOC's comments.

The petitioner did not comment on this issue.

Department Position

The Department preliminarily finds the pre-finished products described above to be covered by the scope of the investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations covers “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters” including “wood siding, flooring, and other coniferous wood.” The factors that the GOC identifies as distinguishing features of the products in question do not differentiate the products from softwood lumber covered by the scope of these investigations, because the scope covers components or parts of semi-finished products made from subject merchandise, and does not specify that in-scope products cannot have a primer, stain, or coating applied to them. Thus, we determine that the scope of these investigations covers pre-finished products.

⁸⁰ See *Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances*, 82 FR 19219 (April 26, 2017).

⁸¹ See *Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017).

Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for pre-finished products of a certain thickness. Therefore, we are not granting an exclusion for pre-finished products for this preliminary determination.

Comment 24: Ripped and Chopped Softwood Lumber Items

GOC Comments

- Ripped and chopped softwood lumber items are outside the scope of these investigations. Such products are used as components for many pre-packed products requiring assembly, *e.g.*, planter boxes, play sets. These items can also be used for finger-joint blocks sold to the window and door industry in the United States. Such products are 1'-4' in length, 3" or less in width, and 6/4" or thinner. These small items are nonstructural and are used in decorative, high visual quality appearance applications.

GBC Comments

- The GBC supports the GOC's comments.

The petitioner did not comment on this issue.

Department Position

The Department preliminarily finds ripped or chopped softwood lumber items described above to be covered by the scope of the investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that at its core, the *Petition* concerns SPF dimensional boards used in structural applications, such as framing houses; however, the scope of these investigations covers "{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters" and covers "components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above." The factors that the GOC identifies as distinguishing features of the product in question do not differentiate the product from softwood lumber covered by the scope of these investigations, and the plain meaning of the scope of these investigations covers the ripped and chopped items described by the GOC.

Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for ripped or chopped softwood lumber items. Therefore, we are not granting an exclusion for ripped and chopped items for this preliminary determination.

Comment 25: High-Value Finger-Jointed Pine Lumber

West-Wood Comments

- The Department should clarify that the scope of these investigations excludes finger-jointed pine valued at more than US\$1,200 per thousand board feet because exclusion of these products would be consistent with the distinct treatment of high value products under the *2006 SLA*. Moreover, the category described above is extremely narrow and such products are produced only for specialty applications.

The petitioner did not comment on this issue.

Department Position

The Department preliminarily finds that, regardless of the value of finger-jointed pine, it is covered by the scope of these investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The scope explicitly covers, “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed.” Because the scope does not exclude finger-jointed softwood lumber or high-value softwood lumber, the plain language of the scope of these investigations covers the products described by West-Wood.

Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for high-value finger-jointed pine lumber. Therefore, we are not granting an exclusion for high-value finger-jointed lumber for this preliminary determination.

Comment 26: Landscape Ties

GOC Comments

- Landscape ties are outside the scope of these investigations. Landscape ties consist of round wood lumber squared off on two opposite sides to make a product with two flat sides and two round sides. The product is laid flat and/or stacked for use in landscaping. This product has a very unique shape and comes in two possible sizes: (1) 4” diameter round face with 3 1/4” flat sides, 8’ long; and (2) 3 3/8” diameter round face with 2 3/4” flat sides, 8’ long.

GBC Comments

- The GBC supports the GOC’s comments.

The petitioner did not comment on this issue.

Department Position

The Department preliminarily finds that landscape ties are covered by the scope of these investigations. Furthermore, we will not grant an exclusion for the product for this preliminary determination.

The GOC claims that at its core, the petitioner’s case concerns SPF dimension boards used in structural applications, such as framing houses; however, the scope of these investigations covers “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.” The GOC makes little distinction between the items at issue here and softwood lumber as described in the scope. Further, the scope of these investigations explicitly covers softwood lumber that is rounded. While the GOC states that these landscape ties have a “very unique shape,” aside from being rounded, the GOC identifies little that distinguishes the landscape ties it describes from in-scope lumber. Nor do the landscape ties described by the GOC have markings or other special adaptations that prevent their use in many other applications. Thus, we have preliminarily determined that the scope of these investigations covers the landscape ties described by the GOC.

Additionally, the petitioner has not supported the exclusion of landscape ties from the scope of the investigations. Therefore, we are not granting an exclusion for landscape ties for this preliminary determination.

Comment 27: Western Red Cedar and Eastern White Pine

WFP, Interfor and GOC Comments Concerning Western Red Cedar (WRC)

- WRC should be excluded from these investigations because it is a distinct product that comprises a separate industry and the *Petition* alleges no injury with respect to the WRC industry.
- WRC is a species of wood which has distinct physical characteristics, end uses, channels of distribution, and customer expectations.
- WRC is sold primarily through distributors who undergo specialized training on how to store, sell, and install the product.
- Customers readily distinguish WRC from structural softwood products, and are willing to pay a significant premium for it compared to other softwood lumber.
- WRC is not suitable for structural applications and has a unique premium appearance distinct from softwood lumber covered by the scope of the *Petition*.
- Because of its unique properties, WRC commands a significant price premium to other softwood lumber products and is not considered by purchasers to be interchangeable with other softwood species.

GBC Comments Concerning WRC

- WRC should be excluded from these investigations because it is used for applications different from the dimensional framing lumber products primarily at issue in these investigations.

GOC, OFIA and CIFQ Comments Concerning Eastern White Pine (EWP)

- EWP is a separate class or kind of softwood lumber that should not be included in the scope of these investigations.
- EWP is valued primarily for its appearance. Unlike softwood lumber that has a high strength to weight ratio, EWP is weaker and softer than species used to make studs and dimension lumber and has fairly low resistance to impact.
- EWP is prized for its dimensional stability and aesthetic appeal, but does not have the strength required for construction uses. EWP has its own grading system based on the product's appearance, distinguishing it from other types of softwood lumber. Purchasers can expect from EWP a uniquely aesthetic, workable, appearance-grade wood fiber and expect it to be offered in unique and distinct sizes.
- EWP is used primarily in the manufacture of furniture and other specialty products such as toys, caskets, and shade and map rollers. EWP is suited for furniture applications because it is more workable and malleable than other softwoods, and its low moisture content is critical for furniture production.
- EWP generally is not used in strength applications. Given its relative weakness and high cost, EWP is unsuitable for the most common general construction uses of other softwoods, such as home construction, which the *Petition* identifies as the key source of demand for softwood lumber.
- EWP is sold primarily to furniture, window and other specialty product manufacturers that make use of its appearance and high dimensional stability, whereas softwood lumber is delivered to distribution centers for subsequent delivery to home builders or retailers.
- EWP is sold predominantly in the eastern United States while, the Western Pines are sold in the West. In addition, Western Pines usually are transported by rail, whereas EWP is moved almost exclusively by truck.
- The lumber industries market EWP in a different manner than softwood lumber by giving EWP its own grading system. EWP grading rules are developed for appearance. By contrast, the rules for dimension lumber are based on structural uses. The differences in grading rules reflect the wide recognition that EWP's end uses are directly related to its appearance, rather than strength and

Barcode: 3585482-01 A-122-857 INV - Investigation - resistance to impact. In these and many other respects, EWP is more like hardwoods than softwoods.

Petitioner Comments

- The scope of the *Petition* clearly covers all softwood lumber products, regardless of species, and the Department has affirmed this scope in all other investigations of softwood lumber that it has conducted over the last three decades.⁸²
- The Department should deny the requests to exclude WRC and EWP from the current scope of the investigations.
- The Department has previously determined, in *Lumber IV*, that “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.”⁸³
- The ITC repeatedly found that “all species, including WRC, share the same general characteristics and use and that there are no clear dividing lines between the numerous species that comprise the continuum of softwood lumber and do not define either WRC or white pine as a separate domestic like product.”⁸⁴
- The Department has previously considered and rejected claims that WRC is a separate class or kind of merchandise from the softwood lumber products under investigation here, and has determined that WRC is within the same class or kind of merchandise as softwood lumber products more generally.⁸⁵
- The Department has previously not found any individual species, including EWP, to constitute a different class or kind of merchandise from the lumber covered by the scope of softwood lumber product investigations. The Department has stated that “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.”⁸⁶
- The ITC has also found that EWP shares the same general characteristics and uses as other species of softwood lumber.⁸⁷

Department Position

The Department preliminarily determines that WRC and EWP are covered by the scope of these investigations, and determines that an exclusion is not warranted. As an initial matter, the scope covers “softwood lumber” without regard to any particular species. As acknowledged by all parties, WRC and EWP are two species of softwood lumber and, thus, are all clearly covered by the plain language of the scope. To the extent that interested parties assert that these species have non-structural applications, this is immaterial, as these investigations cover softwood lumber products beyond dimension lumber.

⁸² See Petitioner January 19, 2017 Scope Comments at 30.

⁸³ *Id.*

⁸⁴ *Id.* at 31 and Exhibits 9 and 24 (citing *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Final), Determinations and Views of the Commission, USITC Publication No. 3509 at 8 (May 2002)); see also *Softwood Lumber Products from Canada*, Inv. Nos. 701-TA-566 and 731-TA-1342 (Preliminary) Determinations and Views of the Commission, USITC Publication No. 4463 at 12 (January 2017) (*ITC Preliminary Determination*) (“The differences, primarily in customer and producer perceptions or preferences and price, do not provide a clear dividing line between WRC and other species of softwood lumber. Thus, we do not define WRC as a separate domestic like product from other types of softwood lumber.”).

⁸⁵ See Petitioner January 19, 2017 Scope Comments at 32 (citing *Lumber IV* IDM at Comment 52 and page 142); see also the GOC January 9, 2017 Scope Comments at Attachment 1.

⁸⁶ See Petitioner January 19, 2017 Scope Comments at 32 (citing *Lumber IV* IDM at Comment 52).

⁸⁷ *Id.* (citing *Lumber IV Final ITC Determination* at 8 and *Lumber V* Preliminary USITC Views at 14).

Further, in *Lumber IV*, the Department found WRC and EWP to be of the same class and kind as all other softwood lumber under investigation. In *Lumber IV*, the Department based its determination on a careful and thorough evaluation of the entire case record concerning the *Diversified Products* criteria.⁸⁸ As part of this proceeding, the ITC considered comparable criteria and reached the same conclusion that WRC and EWP cannot be distinguished as separate classes or kinds of softwood lumber, distinct from the merchandise covered by these investigations.⁸⁹

Here, as in *Lumber IV*, the parties assert that WRC is unique in terms of physical characteristics (*i.e.*, it is light-weight, durable, has a low shrinkage factor, and is naturally resistant to decay), differs in terms of price compared to other lumber (*i.e.*, it commands a significant price premium), and is marketed in a different manner than the other lumber products covered by these investigations. However, the fact that WRC possesses these attributes does not warrant a finding that it is a separate class or kind of merchandise. Although interested parties highlight differences between WRC and other species of softwood lumber, the ITC repeatedly found that “all species, including WRC, share the same general characteristics and use and that there are no clear dividing lines between the numerous species that comprise the continuum of softwood lumber and do not define either WRC or white pine as a separate domestic like product.”⁹⁰ This is because, across lumber species, there is wide variation in characteristics such as weight, durability, shrinkage, and decay.⁹¹

With regard to its ultimate end use, and as in *Lumber IV*, interested parties frequently note that WRC is not primarily used as dimension lumber for structural or framing purposes. While a large portion of products covered by these investigations is dimension lumber used in structural applications, these investigations explicitly cover many products that are used in non-structural applications, such as lumber used for siding, flooring, and other applications. No language in the scope of these investigations limits coverage to lumber used in structural applications. On the contrary, the scope of these investigations, as well as all other investigations of softwood lumber products that the Department has conducted in the last twenty years, covers all softwood lumber, whether used in structural or other applications. Furthermore, the U.S. Department of Agriculture (USDA) handbook states that WRC “is used principally for shingles, lumber, poles, posts, and piles. The lumber is used for exterior siding, decking, interior woodwork, ship and boat building, boxes and crates, sashes, and doors.”⁹² Such end uses are not dissimilar to the end uses for other types of softwood lumber.

⁸⁸ On March 12, 2002, as part of the *Lumber IV* investigation, the Department issued a memorandum preliminarily determining that certain lumber products for which a class or kind determination had been requested did not constitute a separate class or kind. We have attached that memorandum as Attachment III. This determination was unchanged in *Lumber IV Final Determination*. See Memorandum, “Class or Kind Determinations and Consideration of Certain Scope Exclusion Requests,” dated March 12, 2002 (Lumber IV Preliminary Scope Memorandum).

⁸⁹ See *ITC Preliminary Determination* at 8-12.

⁹⁰ See *id.* at 12 (“The differences, primarily in customer and producer perceptions or preferences and price, do not provide a clear dividing line between WRC and other species of softwood lumber. Thus, we do not define WRC as a separate domestic like product from other types of softwood lumber.”).

⁹¹ The ITC has consistently found that softwood lumber varies based upon characteristics such as species, size, shape, stage of manufacture, moisture content, and grade, and the fact that not all softwood lumber is suitable for all uses. See *ITC Preliminary Determination* at fn 26; *Softwood Lumber from Canada*, Inv. No. 701-TA-197 (Prelim.), USITC Pub. 1320 at 4-5 (Nov. 1982); *Softwood Lumber from Canada*, Inv. No. 701-TA-274 (Prelim.), USITC Pub. 1874 at 5-7 (July 1986); *Softwood Lumber from Canada*, Inv. No. 701-TA-312 (Final), USITC Pub. 2530 at 5-11 (July 1992); *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Final), USITC Pub. 3509 at 6-12 (May 2002).

⁹² See Memorandum, “Certain Softwood Lumber Products from Canada: Scope Exclusion Requests Received from Oregon-USDA Forest Service Wood Handbook - Wood as an Engineering Material,” dated February 10, 2017, Attachment, at 2-13 (USDA Handbook Memo).

Parties argue that customers of WRC normally expect to pay higher prices and to use WRC for decking and other applications where appearance is an important consideration. However, WRC is not the only variant of lumber that commands a higher than average price – in fact, as discussed below, numerous parties requested exclusions for high-value products that were not WRC.⁹³ The ITC also found that other premium products such as redwood and other types of cedar, including Atlantic White Cedar, are perceived as similar alternatives to WRC.⁹⁴ Further, the NLGA chapter for decking mentions Douglas Fir and Western Larch, and allows for decking materials of all species of special lumber.⁹⁵ Additionally, the ITC noted that other species of softwood lumber (including SPF, Port Orford cedar, yellow cedar, southern yellow pine, and redwood) are used in the same applications (including some structural applications) as WRC lumber, such as siding, poles/piles/posts, and decks.⁹⁶

WRC is also not unique in that it is marketed and sold to end-users for non-structural uses. Parties do not attempt to distinguish WRC's channels of trade from those of other high-end lumber subject to the scope, but argue that the Department should only compare WRC's channels of trade with the channels of structural lumber. The Department has compared WRC's channels of trade to all merchandise under consideration in its analysis. In doing so, we find that WRC's channels of trade are not substantially different from other high-end, specialty softwood so as to warrant treatment as a separate class or kind.

Because WRC is a softwood lumber with high-end applications, it is advertised as such, and marketed in a manner which highlights these applications. However, this does not distinguish it from how other high-end products covered by this investigation, such as redwood, other types of cedar, Douglas Fir and Western Larch, all of which are similar to WRC in terms of advertising and marketing. Additionally, as noted above, because other, less expensive types of softwood lumber are used in similar applications as WRC, they too would be advertised in similar manner to WRC.

With regard to EWP, as in *Lumber IV*, the parties assert that EWP is unique in terms of physical characteristics (*i.e.*, it is light-weight, has a low shrinkage factor, has a low moisture content, is receptive to finishes, and is chosen and produced to appearance rather than to strength). However, the fact that EWP possesses these attributes does not warrant a finding that it is a separate class or kind of merchandise. The Department explained in *Lumber IV* that information on the record indicated that EWP had been, and was being, used in construction. Therefore, we determined that “differences in structural strength are not so great (between EWP and other lumber) to be deemed unique when compared to other softwoods.”⁹⁷ To the extent EWP is unsuitable for the general construction uses of other softwood lumber, the ITC has nevertheless found that EWP has overlapping end uses with such other softwood lumber species as sugar pine, ponderosa pine, and Idaho pine.⁹⁸ The Department further explained in *Lumber IV* that information on the record also indicated that various pines, such as Ponderosa Pine, could also effectively take paints, stains, varnishes and polishes.⁹⁹ While certain parties have emphasized the importance of EWP's appearance, EWP is not the only variant of lumber that commands a higher than average price due to appearance. The ITC also found that other premium products such as redwood and other types of cedar, including Atlantic White Cedar, are priced based on their appearance.¹⁰⁰ Likewise, the Department found that many other pines are selected based on appearance.¹⁰¹ In fact, the ITC noted

⁹³ See Comments 25, 29, and 30.

⁹⁴ See *ITC Preliminary Determination* at 10.

⁹⁵ See Memorandum, “Certain Softwood Lumber Products from Canada: NLGA,” dated February 10, 2017, at Section 5.

⁹⁶ See *ITC Preliminary Determination* at 10.

⁹⁷ See *Lumber IV Preliminary Scope Memorandum* at 28.

⁹⁸ See *ITC Preliminary Determination* at 13.

⁹⁹ See *Lumber IV Preliminary Scope Memorandum* at 28.

¹⁰⁰ See *ITC Preliminary Determination* at 10.

¹⁰¹ See *Lumber IV Preliminary Scope Memorandum* at 30.

that one interested party acknowledged that EWP is interchangeable with other appearance-grade woods.¹⁰² Additionally, the ITC noted that while there is a separate grading system for EWP, EWP is not the only species of softwood lumber for which the grading system is not based on strength.¹⁰³ While there are some characteristics unique to every softwood lumber species, EWP is not sufficiently different from the range of products subject to these investigations to be considered a separate class or kind of merchandise.

While parties have argued that EWP is commonly used in special furniture applications, in *Lumber IV* the Department found that certain species, such as Ponderosa Pine, might compete with EWP in certain specialty product applications.¹⁰⁴ In addition, although the Department acknowledged that EWP is not primarily used for construction purposes, it noted that information on the record demonstrated that EWP could be used in construction.¹⁰⁵ The USDA Wood Handbook noted that a large proportion of EWP, mostly second-growth knotty wood or lower grades, is used for structural lumber. In this publication, the USDA also noted that EWP is used “in a great variety of ways.”¹⁰⁶ Considering these factors together, the Department found that “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.”¹⁰⁷

Although parties claim that purchasers can expect from EWP a uniquely aesthetic, workable, appearance-grade wood fiber and expect it to be offered in unique and distinct sizes, nothing about this description would substantially differentiate EWP from other types of softwood lumber. As noted above, many types of softwood lumber, such as redwood and cedar are purchased based on appearance. The NLGA is replete with types of lumber graded based on appearance.¹⁰⁸ With so many colors, sizes, and densities among the different forms of softwood lumber, it is not surprising that a scope would include many different types of wood which are valued for their appearance. As for the workability that parties claim differentiates EWP from other types of softwood lumber, the USDA Handbook states that Western White Pine is made into siding of various kinds, exterior and interior woodwork, and millwork and has practically the same uses as EWP and Sugar Pine.¹⁰⁹

While *OFIA* and *CIFQ* claim that EWP is sold primarily to furniture, window and other specialty product manufacturers that make use of its exceptional appearance and high dimensional stability, whereas softwood lumber in general is delivered to distribution centers for subsequent delivery to home builders or retailers, they have provided no documentation in support aside from a declaration from a sales manager of a respondent arguing for this decision.¹¹⁰ This declaration stands in contrast to other record evidence. As noted above, the USDA noted that other species of softwood lumber are used in identical applications, and the ITC found that other softwood lumber products (such as ponderosa pine, Idaho white pine, redwood, Eastern red cedar, yellow cedar, Port Orford cedar, bald cypress, Atlantic white cedar) also sell at prices similar to EWP.¹¹¹ Thus there is nothing on this record that would distinguish our analysis from our decision in *Lumber IV* where we found that the information on the record did not “substantiate” the

¹⁰² See *ITC Preliminary Determination* at 14.

¹⁰³ See *id.*

¹⁰⁴ See *Lumber IV Preliminary Scope Memorandum* at 28.

¹⁰⁵ See *id.*

¹⁰⁶ See USDA Handbook Memo, Attachment, at 2-13.

¹⁰⁷ See *Lumber IV IDM* at Comment 52.

¹⁰⁸ See National Lumber Grades Authority, 2014, placed on this record on February 10, 2017, at Section 5.

¹⁰⁹ See USDA Wood Handbook at 2-13.

¹¹⁰ See *OFIA* and *CIFQ* May 5, 2017 Scope Comments at Attachment 2.

¹¹¹ See *ITC Preliminary Determination* at 14.

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claim that EWP is “sold in unique and distinguishable channels.” Further, in response to claims that the distribution systems are geographically divided, with EWP sold predominantly in the eastern United States and Western Pines sold in the West, the ITC concluded that there is no information in the record that distribution patterns for domestically produced EWP products have changed materially since *Lumber IV*.¹¹³

Ultimately, while WRC and EWP are distinct species, they substantially share each of the *Diversified Products* criteria with other softwood lumber species.¹¹⁴ As the Department stated in *Lumber IV*, “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.”¹¹⁵ With respect to WRC, the Department concluded in *Lumber IV*, that “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.”¹¹⁶ With respect to EWP, the Department stated that “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.”¹¹⁷

Because the information on the record of the current investigations is largely consistent with the data analyzed in *Lumber IV* with respect to WRC and EWP, and for the reasons stated above, the Department finds that it is unable to discern a clear division between EWP, WRC, and the other species that constitute the merchandise. Accordingly, the Department determines that EWP and WRC are part of a single class or kind of merchandise together with the other merchandise covered by these investigations. Moreover, the Department continues to include all species within the scope of these investigations. Additionally, the petitioner has not supported an exclusion for these species, and therefore, we are not granting an exclusion for EWP and WRC for this preliminary determination.

Comment 28: Yellow Cedar

WFP Comments

- Yellow Cedar should be excluded from these investigations.
- In *Lumber IV*, the Department established that there is negligible production of Pacific Coast Yellow Cedar products in the United States.¹¹⁸

Petitioner did not comment with respect to yellow cedar.

Department Position

The Department preliminarily finds that the plain language of the scope of these investigations covers Yellow Cedar, as the scope covers “softwood lumber” without regard to any particular species. Yellow cedar is a type of softwood lumber and no party has argued otherwise. Furthermore, to date, the petitioner

¹¹² See *Lumber IV* IDM at Comment 52.

¹¹³ See *ITC Preliminary Determination* at 13.

¹¹⁴ See *Lumber IV* IDM at Comment 52.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See WFP May 5, 2017 Scope Comments at 1 (citing Petition for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada (Nov. 25, 2016) at Exhibit 24 (ITC Staff Report at III-14, Table III-11) (showing U.S. production of “other softwoods” – which would include Yellow Cedar among a number of other species – of 1.6 percent in 2000)).

has not supported an exclusion of Yellow Cedar products from the scope of the investigations. Therefore, we are not granting an exclusion for Yellow Cedar products for this preliminary determination.

Comment 29: Certain Products Made from Douglas Fir and Hemlock Trees

OCFP Comments

- OCFP requests that the Department exclude the following types of softwood lumber made from Douglas Fir and Hemlock trees imported under the following HTSUS categories:
 - 4407.10.0155 - Douglas Fir 2 inches and thinner: Grades - 1 Shop VG, Factory Select VG, and 3 Clear & BTR VG; Value: US\$750 per thousand board feet or greater.
 - 4407.10.0155 - Douglas Fir 2 inches and thicker to 5 inches thick: Grades - Shop Flitch, Factory Flitch, R-List 4 Clear, and R-List 3 Clear & BTR, all Mixed Grain; Value: US\$1200 per thousand board feet or greater.
 - 4407.10.0156 - Douglas Fir over 5 inches up to 8 inches thick - Grades: Shop Flitch, Factory Flitch, R-List 4 Clear, and R-List 3 Clear & BTR, all Mixed Grain; Value: US\$1700 or greater.
 - 4407.10.0156 - Douglas Fir over 8" thick - Grades: Shop Flitch, Factory Flitch, R-List 4 Clear, and R-List 3 Clear & BTR, all Mixed Grain; Value: US\$2000 or greater.
 - 4407.10.0164 - Hemlock all dimensions - Grades: D&BTR, C&BTR, Factory Flitch, R-List 4 Clear, and R-List 3 Clear & BTR, both Mixed Grain and Vertical Grain; Value US\$650 or greater.
- To address the petitioner's concerns that there is a mechanism in place that verifies that products meet the parameters of the exclusion, the Canadian Mill Services Association (CMSA), an accredited agency with the Canadian Lumber Standards Accreditation, could perform the verification procedures.
- Utilizing a longstanding, independent certifying body like the CMSA, removes the administrative and technical burden from CBP of identifying species and grade.

Petitioner Comments

- The petitioner understands that there may be little or no U.S. production of the items identified by OCFP, and is willing to consider agreeing to the exclusions described. However, the OCFP requests are defined according to the "Export R List Grading and Dressing Rules," or "R-List" grades, which are published by the Pacific Lumber Inspection Bureau (PLIB). The PLIB's grading rules, however, supplement the grading rules published by the American Lumber Standard Committee (ALSC) and the Canadian Lumber Standard Accreditation Board (CLSAB). As such, the OCFP's reference to R-List grades may not be the same as the ALSC and CLSAB grades. If there is proper clarification, the petitioner may agree to exclude such products from the scope of the investigations.
- Defining any exclusion in terms of the species or grade of lumber raises significant concerns with regard to possible circumvention.

All-Coast and Herbert Lumber Comments

- All-Coast and Herbert Lumber oppose the requested exclusion.
- Contrary to assertions on the record, U.S. entities, including Herbert Lumber, do produce the types of lumber for which OCFP is requesting exclusions.
- The potential for circumvention using these exclusions would be high because producers could easily manipulate their products and grades in order to pass them off as meeting the requested exclusion requirements.

IWPA Comments

- CBP has the statutory obligation to enforce any exclusion. It can be assisted by an agency, but that responsibility cannot be assumed by, or delegated to, an agency in a foreign country.
- IWPA contacted the CMSA – the body that OCFP proposes will certify compliance with this exclusion – and the CMSA stated that, after considering the possibility of implementing a certification system, it is not at present prepared to implement such a system.

Department Position

The Department preliminarily determines that the specified products made from Douglas Fir and Hemlock, as described by interested parties, constitute merchandise that is covered by the scope of these investigations. We also determine that a scope exclusion is inappropriate for this preliminary determination.

The Douglas Fir and Hemlock articles for which OCFP proposes exclusions from the scope are types of softwood lumber that fall within the scope of these investigations, and no party has argued otherwise. As explained elsewhere in this memorandum, the Department has preliminarily determined that no species of softwood lumber is outside this scope. Accordingly, Douglas Fir and Hemlock products are covered by the scope. Similarly, lumber does not become out-of-scope merchandise simply due to the price it commands. Therefore, identified products made from Douglas Fir and Hemlock are within the scope of these investigations.

To date, the petitioner has not agreed to exclude the products discussed above. Therefore, we are not granting an exclusion for the Douglas Fir and Hemlock articles identified by OCFP for this preliminary determination.

Comment 30: High-Value Products*GOC and GBC Comments*

- The Department should exclude from the scope of these investigations all softwood lumber products valued above US\$500 per thousand board feet. Such products do not compete with the SPF dimensional framing softwood lumber products that are at the center of the allegations contained in the *Petition*.
- The exclusion of high-value softwood lumber products would be consistent with the *2006 SLA*.
- The exclusion of high-value softwood lumber products would not significantly impact the Department's analysis, as these products are, to the best of the GBC's knowledge, imported into the United States in relatively small quantities.

Petitioner Comments

- No exclusion should be allowed for high-value products that are otherwise covered by the scope of the investigations.
- The products described in the GOC's and GBC's requests are covered by the plain language of the scope. Furthermore, many of these products are manufactured by a variety of U.S. softwood lumber producers.

UFP Comments

- No exclusion should be allowed for high-value products that are otherwise described in the scope of the investigations.

The Department preliminarily determines that high-value softwood lumber, as described by interested parties, is covered by the scope of the investigations. We also preliminarily determine that a scope exclusion is inappropriate.

All softwood lumber listed in the scope of the investigations upon which the Department initiated, regardless of value, is covered by these proceedings. There is no exclusion for high-value softwood lumber products. Additionally, to date, the petitioner has not supported an exclusion from the scope of the investigations for high-value softwood lumber products. Accordingly, we are not granting an exclusion for high-value products for this preliminary determination.

Comment 31: Softwood Lumber Produced in Canada from U.S.-Origin Logs

CIFQ Comments

- The Department should exclude softwood lumber made in Canada from U.S.-origin logs from the scope of these investigations.
- The heart of these investigations is the allegation that Canadian provincial governments sell timber from Crown lands for less than adequate remuneration and, therefore, subsidize the production of Canadian softwood lumber. This allegation cannot logically be extended to softwood lumber manufactured from U.S.-origin logs.
- The inclusion of lumber manufactured from U.S.-origin logs within the scope of these investigations would cause severe harm to the many U.S. businesses and their employees in the timber harvesting industry who depend on selling the logs they harvest on U.S. lands.

GOC Comments

- The GOC supports an exclusion from the investigations for softwood lumber made in Canada from U.S.-origin logs.

Petitioner Comments

- This request concerns “softwood lumber made in Canada,” and, thus, the merchandise is unquestionably within the scope of these investigations and CIFQ does not suggest otherwise.
- CIFQ does not address whether the producers of such lumber benefit from other subsidies, including a number of subsidy programs the Department is investigating that may benefit Quebec sawmills that purchase U.S. logs. Additionally, CIFQ’s arguments regarding subsidization do not address whether the lumber in question is sold for less than fair value. For these reasons, the Department should deny this request.
- Moreover, lumber producers that are found, through the Department’s regular procedures, not to be subsidized or not to sell lumber in the United States for less than fair value, can be excluded from any potential AD or CVD orders.

Department Position

The Department agrees with the petitioner that softwood lumber produced in Canada from U.S.-origin logs is covered by the scope of these investigations. As an initial matter, whether such logs benefited from stumpage subsidies is immaterial; the Department’s present determination concerns whether products are covered by the investigations’ scope, not whether producers benefited from countervailable subsidies. In this respect, our determination hinges on, *inter alia*, the language of the scope, which does not exclude softwood lumber produced from U.S.-origin logs.

Furthermore, to date, the petitioner has not supported an exclusion for lumber made in Canada from U.S.-origin logs. Therefore, we are not granting an exclusion for lumber made in Canada from U.S.-origin logs for this preliminary determination.

Comment 32: Logs Harvested on First Nations Treaty or Private Lands

GBC and GOC Comments

- The Department should exclude from the scope of these investigations softwood lumber produced from logs harvested on private land and First Nations Treaty Settlement Lands.
- Such an exclusion is justified based on the undisputed fact that private land harvesters in Canada are not subject to Crown stumpage fees and thus cannot benefit from the alleged subsidies programs.

Petitioner Comments

- Lumber produced from logs harvested on First Nations Treaty lands and private land is clearly within the scope of these investigations and the GOC and the GBC have failed to give any reason for its exclusion.
- The GOC and the GBC did not address whether the producers of lumber produced from logs harvested on First Nations Treaty lands or private lands benefit from other subsidies, such as log export restrictions in British Columbia, which certainly apply to logs harvested on private land. Additionally, interested parties have not indicated how such arguments relate to the question of whether such merchandise is sold for less than fair value.

Department Position

The Department agrees with the petitioner that lumber produced from logs harvested on First Nations Treaty land or private land is covered by the scope of these investigations. Regardless of its location within Canada, this lumber is Canadian in origin and would be covered by an AD or CVD investigation of Canadian merchandise absent the existence of an exclusion.¹¹⁹ Further, as stated above, whether such logs benefited from subsidies is immaterial; the Department's present determination concerns whether a product is covered by the investigations' scope, not whether producers benefited from countervailable subsidies. In this respect, our determination hinges on, *inter alia*, the language of the scope, which does not exclude softwood lumber produced from logs harvested on First Nations Treaty land or private land.

Further, the petitioner has not supported an exclusion of such merchandise from the scope of the investigations. Accordingly, we will not exclude these products from the scope for this preliminary determination.

Comment 33: U.S. Entries under Temporary Import Bonds and Goods to be Exported

GOC Comments

- The Department should exclude articles which are brought into the United States temporarily, and which are claimed to be exempt from duty under Chapter 98, Subchapter XIII, of the HTSUS (*i.e.*, under Temporary Import Bonds (TIBs)). These items were expressly excluded from the scope of

¹¹⁹ With respect to their subsidy claims, the GOC and the GBC have only addressed whether logs harvested on private land and First Nations Treaty land benefited from Crown stumpage fees. The parties have not considered whether such products benefitted from other countervailable benefits. In any case, such arguments do not address whether or not this merchandise is covered by the scope of both the AD and CVD investigations.

the 2006 SLA,¹²⁰ ~~Barcode:3585482-01 A-122-857 INV - Investigation -~~ and, for clarity and predictability, the same exclusion should be added to scope of these investigations.

OCFP Comments

- Softwood lumber imported from Canada for the purpose of producing goods for the export market should be granted an exemption from AD and CVD duties. Under the SLA, parties were permitted to bring raw material into the United States under TIBs for this purpose.

Department Position

In accordance with section 733(d)(2) of the Act, the Department can only assess AD duties on subject merchandise declared as entered for consumption in the United States.¹²¹ Normally, TIB entries are not entered for consumption and, therefore, the Department does not assess AD or CVDs on such TIB entries. Thus, softwood lumber brought into the United States under TIBs and not entered for consumption in the United States would not be subject to any AD duties or CVDs that may result from these investigations.

However, insofar as softwood lumber is declared as entered for consumption in the United States, it is subject to applicable AD duties or CVDs, in accordance with section 733(d)(2) of the Act, without regard for whether the lumber is consumed in the production of exported products. Accordingly, the Department declines to include the GOC's proposed language in the scope.

Comment 34: Bed-Frame Components and Crating Ladder Components

Resolute Comments

- Bed-frame components are outside of the scope of these investigations. Such products constitute a different class or kind of merchandise as compared with softwood lumber products more generally.
- If the Department determines that bed-frame components are within the scope, it should exclude such merchandise pursuant to the exclusionary language proposed by the parties, which was developed in consultation with the petitioner.

BarretteWood and EACOM Comments

- The Department should exclude bed-frame components pursuant to the exclusionary language proposed by the parties, which was developed in consultation with the petitioner.

Barrettewood Comments

- The Department should exclude crating ladder components pursuant to the exclusionary language proposed by the parties, which was developed in consultation with the petitioner.

Petitioner Comments

- The petitioner consents to the exclusionary language proposed by the parties covering bed-frame components and crating ladder components.
- Although the petitioner believes that the proposed exclusionary language addresses its concerns regarding circumvention, the petitioner acknowledges that the Department will not adopt the proposed exclusions if it does not find such language administrable.

¹²⁰ See Petition, Volume I, at Exhibit 3 (containing language from the SLA 2006, at Annex 1A, para. 3(j)).

¹²¹ See *Titanium Metals Corp. v. United States*, 901 F. Supp. 362 (CIT 1995).

- Although the petitioner continues to work with parties to develop optimal exclusion language, the petitioner supports adoption of two exclusions relating to bed-frame kits/components, both of which were adopted in *Lumber IV*:

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 must be radius-cut at both ends. The kits must be individually packaged and must 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.

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.

UFP Comments

- The Department should refuse to adopt an exclusion for bed-frame components. UFP produces bed-frame components in the United States and would be harmed by an exclusion for these products.
- Additionally, bed-frame components are simply minimally-processed softwood lumber. The proposed exclusionary language – which requires that: (1) the components be invoiced as components of a completed/finished bed-frame set; and (2) that parties retain a copy of the specification/design of the finished product to demonstrate to CBP that the component is actually a portion of the finished set – is insufficient to prevent circumvention.

Department Position

The Department has considered interested parties’ proposed exclusions for bed-frame components and crating ladder components, as well as Resolute’s arguments concerning the scope status of bed-frame components. We preliminarily determine that both products are within the scope of these investigations, and will consider revised exclusionary language covering bed-frame components and crating ladder components, if submitted by interested parties.

As an initial matter, the Department disagrees with Resolute’s assertion that bed-frame components constitute a different class or kind of merchandise from softwood lumber covered by these investigations. Invoking the *Diversified Products* criteria, Resolute asserts that bed-frame components have unique physical characteristics (*i.e.*, particular end shaping and sizes), cost more than standard lumber, have different uses than structural lumber (*i.e.*, in bed-frames rather than construction applications), are sold in different channels of trade, and are marketed in unique ways when compared with softwood lumber more generally.¹²² However, none of these characteristics distinguish bed-frame components from the softwood lumber products covered by this scope.

Nothing in the scope indicates that lumber in the size of bed-frame components, or lumber that has particular end cuts, is outside of the scope. In fact, the scope explicitly covers “angle cut” and “notched” lumber. Furthermore, as noted above, the scope does not require lumber to be under a certain dollar value, or used in home construction, to fall within the scope of these investigations. Finally, softwood lumber is sold and marketed to a wide variety of purchasers, including retailers, distributors, manufacturers, and end-users. For these reasons, we preliminarily determine that bed-frame components are the same class or kind of softwood lumber products covered by the scope of the investigations.

¹²² See Resolute January 9, 2017 Scope Comments at 1-8.

No party asserted that crating ladder components are outside of the scope of these investigations, or that such components constitute a different class or kind of merchandise. BarretteWood’s description of the merchandise – *i.e.*, pieces of spruce lumber that are up to 1” thick and vary in lengths up to 86 ¼” as well as cross pieces of 1” by 16” in length¹²³ – indicates that crating ladder components fall squarely within the narrative description of the scope, which covers “{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.”

For the reasons stated, bed-frame components and crating ladder components¹²⁴ fall within the scope of these investigations. Several interested parties sought an exclusion for bed-frame and crating ladder components. On June 2, 2017, the Department met with interested parties to discuss exclusions for such components. At the conclusion of the meeting, the parties indicated that they would continue to work with each other, and the Department, to develop appropriate scope exclusion language.¹²⁵

Although interested parties have indicated that they are still working on broader exclusion language for bed-frame components and crating ladder components, on June 13, 2017, the petitioner submitted two exclusion requests covering bed-frame kits and specified components of bed-frames.¹²⁶ The Department preliminarily adopts these exclusions, as set forth above.¹²⁷ The Department will consider expanded exclusionary language covering bed-frame components, and exclusionary language for crating ladder components, if submitted by interested parties.

Recommendation

We recommend that the Department adopt the positions, as outlined above, concerning the scope of the AD and CVD investigations of certain softwood lumber products from Canada.¹²⁸

Agree _____ Disagree _____

6/23/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

¹²³ See BarretteWood January 9, 2017 Scope Comments at 2.
¹²⁴ No party argued that crating ladder components are outside the scope of these investigations.
¹²⁵ See Memorandum, “Meeting Regarding Proposed Exclusion Language,” dated June 8, 2017,
¹²⁶ See Letter from the petitioner to the Department, “Certain Softwood Lumber Products from Canada: Additional Proposed Scope Exclusions,” dated June 13, 2017. The proposed exclusions are consistent with the exclusions covering box-spring frame kits and radius-cut box-spring-frame components that the Department implemented in *Lumber IV*.
¹²⁷ See also Attachment 1 (containing the revised scope language).
¹²⁸ The revised scope, based on the recommendations in this memorandum, is contained in Attachment I.

Attachment I

Scope of the Investigations

The merchandise covered by these investigations is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers “Wood and articles of wood.” Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44:

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 4418.99.10.00.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44:

4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.91.70.40; and 4421.91.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

The scope of these investigations excludes the following items:

U.S.-origin lumber shipped to Canada for processing and imported into the United States is excluded from the scope of the investigations if the processing occurring in Canada is limited to one or more of the following: (1) kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.

Box-spring frame kits are excluded 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 must be radius-cut at both ends. The kits must be individually packaged and must 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.

Radius-cut box-spring-frame components, not exceeding 1” in actual thickness or 83” in length, ready for assembly without further processing are excluded. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Attachment II

Truss Description

Attachment III

Lumber IV Scope Memorandum