Softwood lumber dispute
ADD/CVD Fact Sheet

The following document consists of the following key sections:

Section 1: Key dates and general information

Countervailing duty (CVD)

In April, 2017, preliminary message 7118311 was issued for a new countervailing duty case on Canadian Softwood Lumber (C-122-858). Also in April, the preliminary affirmative determination of critical circumstances for certain softwood lumber products from Canada was published in the Federal Register.

Here's what this means to your shipments:

1. Entries subject to CVD Case C-122-858 that were entered or withdrawn for consumption **on or after January 28, 2017** are to be changed to entry type "03" with CVD added to all appropriate entries. The following rates were listed therein;

For "All Others" 19.88% Case C-122-858-000; For J.D. Irving Ltd. - 3.02% Case C-122-858-002.

2. All entries that were entered or withdrawn for consumption **on or after April 28, 2017** are subject to CVD – this refers to all cases, including the four not subject to critical circumstances.

Rates:

20.26% Canfor Corporation- Case C-122-858-001

12.82% Resolute FP Canada Case C-122-858-003

19.50% Tolko Marketing & Sales Ltd. Case C-122-858-004

24.12% for West Fraser Mills Ltd. - Case C-122-858-005

The Final Decision for this CVD case is expected to come in early September 2017, unless postponed.

SCENARIOS:

Scenario 1. Manufacturer/exporter has its own rate.

Use Manufacturer/exporter's rate.

Scenario 2. Manufacturer/producer (Company A) has its own rate.

Exporter (Company B) does not have its own rate

Use exporter's rate (Company B) for affected products in Company B's inventory (that would be the "All Others" rate)

Use Manufacturer's rate (Company A) for any "pass through" lumber products that leave the manufacturer and are sold to Company B, destined for the United States.

Scenario 3. Manufacturer/primary mill (Company A) has its own rate.

Exporter/remanufacturer (Company B) does not have its own rate.

Use "All Others" rate applicable to Company B as the remanufactured product is a "new and different" product from the raw lumber purchased.

Scenario 4. Manufacturer/primary mill (Company A) has its own rate.

Remanufacturer (Company B) does not have its own rate.

Exporter (Company C) does not have its own rate.

Use "All Others" rate applicable to Company C as the remanufactured product is a "new and different" product from the raw lumber purchased.

Anti-dumping duty (AD)

On June 30, 2017, the Department of Commerce (Commerce) sent message 7184309 instructing Customs to begin collecting antidumping duties on certain softwood lumber products from Canada.

Findings of the investigation

As a result of the investigation, Commerce has determined that Antidumping duties (ADD) will be assessed, and that "critical circumstances" do exist with respect to companies subject to the "all others rate". Consequently, Commerce will instruct the U.S. Customs and Border Protection (CBP) agency to impose retroactive provisional measures on entries of softwood lumber from Canada, effective 90 days prior to the publication of this preliminary determination in the Federal Register, for the affected producers and exporters.

The Federal Register notice on **June 30, 2017** made this the effective date for antidumping duty collections on applicable products.

Provinces excluded

Commerce also stated that lumber produced in the provinces of Nova Scotia, Prince Edward Island, and Newfoundland-Labrador will be excluded from both Countervailing and Antidumping duties.

More details

To read Commerce's press release in its entirety, please visit: https://www.commerce.gov/news/press-releases/2017/06/us-department-commerce-issues-affirmative-preliminary-antidumping-duty

You'll also find more details about the announcement in the attached factsheet.

Products excluded (and not excluded) from the findings

The Department of Commerce has also provided additional information about products that have been excluded from the findings, and therefore will not be assessed Countervailing or Antidumping duties, and products that were denied exemption requests.

Products exempt from CVD and ADD:

- Assembled pallets
- Assembled trusses and I-joists
- Open-webbed floor joists
- Edge-glued wood
- Cross-laminated timber
- Assembled wood blinds

Products that were denied exemption:

- Truss kits
- Pallet kits and notched stringers
- Home packages and kits
- Lumber produced in Canada from U.S.-origin logs
- Lumber produced from logs harvested on First Nations Treaty land or private land

Antidumping duty rates

The breakdown for the AD for each respective manufacturer is as follows:

Exporters/Producers	Antidumping Duty Rates
Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products Marketing Ltd.	7.72%
Resolute FP Canada Inc.	4.59%
Tolko Marketing and Sales Ltd. and Tolko Industries Ltd.	7.53%
West Fraser Mills Ltd	6.76%
All Others	6.87%

Non-reimbursement certificates

The current Department of Commerce (Commerce) regulations require that, prior to liquidation and the assessment of antidumping (AD) duties, the importer is required to file a certificate advising whether it has entered into an agreement or otherwise has received reimbursement of AD duties. Further, whenever a CVD case accompanies an AD case, both must be noted within the same certificate.

Softwood Lumber Act of 2008

There will be no changes to the Softwood Lumber Act (SLA) of 2008. It will stay in place for as long as Title VIII of the Tariff Act of 1930, as amended, remains in effect.

SLA of 2008 requirements can be found at this link: https://www.cbp.gov/trade/trade-community/outreach-programs/entry-summary/public-laws-impacting-trade/public-law-110-246/softwood-lumber-act-2008/softwood-act08

Q1: Can CVD/ADD be deducted from the invoice value?

If the invoice specifically states that the AD/CVD is included, it can be deducted from the value if the same is included in the invoice to the customer.

Q2: What can be deducted from the Transaction Value on northern border softwood lumber shipments that are "FOB Destination or DDP" and have AD/CVD Included?

If included and paid, the following can be deducted.

1. Cash Discounts (if taken)*
2. Percentage discounts (if taken)*
3. International freight (actual amount)*
4. Buying commissions *
5. Rebates (only when identified separately on invoice)*
6. Actual costs paid to a freight forwarder*
7. Any lumber permit fees
8. Lacey Act Fee
9. Brokerage fee
10. ADD and CVD fee

*Note: U.S. Customs and Border Protection has determined that if the actual costs are not available or cannot be verified, costs for international transportation and insurance will not be excluded from transaction value.

Q3: Does AD/CVD apply to U.S. lumber exported to Canada to be processed and returned to the U.S., and is a permit required?

U.S. origin lumber shipped to Canada for processing and subsequently imported into the 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
3. sanding

Softwood Lumber permits are required under the Government of Canada export law.

For more information on permits, visit: Global Affairs Canada.

Q4: Are pallets subject to AD/CVD? If so, when will AD/CVD apply and/or not apply?

Unassembled pallets/kits, and/or components are subject to AD/CVD. Fully assembled pallets are not subject to AD/CVD.

Q5: What are the AD/CVD rates? And what process do we need to follow if we purchase lumber from a Canadian lumber company and export the lumber directly to the U.S.?

If lumber is purchased from a producer that has been assigned a specific case/rate, that specific case/rate should be used when exporting that product to the United States.

However, if the lumber is purchased from a producer that does NOT have a specific case/rate, the "All Others" rate must be used.

Note that remanufactured lumber, subject to AD/CVD, will take the "All Others" rate as the current Scope does NOT provide for individual cases for these companies.

Q6: How does AD/CVD apply if lumber is purchased from a Canadian lumber company for processing by an independent manufacture for export to the U.S.?

If the processor does not have an assigned case/rate, the "all others" case C-122-858-000 with a subsidy rate of 19.88% should be used, along with A-122-857-000 for the AD case which carries a 6.87% rate.

Section 2: Retroactive Collection of CVD/ADD

Q7: When will we be required to pay retroactive CVD?

The Industrial Manufacturing Materials Center of Excellence and Expertise (CEE) has issued an Information Notice to the ports recommending that entries subject to retroactive corrections be handled via Post Summary Corrections. They've recommended that claims be made by July 7, 2017.

Q8: Can the retroactive payment be paid over time or is there a specific date for completion?

The retroactive payments will be paid following the filing of the Post-Summary Corrections (PSCs). PSCs cannot be filed on liquidated entries. By law, the PSC must be filed within 270 calendar days of the date of entry. The PSC cannot be filed within 20 calendar days of the scheduled liquidation date.

Q9: How is the retroactive CVD paid, and what do I need to provide?

The retroactive CVD is "tendered" to CBP on a per entry basis (single check). We are in discussions with the Center of Excellence and Expertise (CEE) to determine if a batch process (single check for an Importer's grouping of entries) will be permitted. This decision may reside with the individual ports, which could lend inconsistency to what is or isn't permitted.

Q10: If we included an amount for CVD in our pricing during the retroactive period, in anticipation of a retroactive decision, can we deduct this CVD amount from the invoiced value when calculating CVD payable?

This specific question has been posed to U.S. Customs and Border Protection and is currently being reviewed. We will disseminate the details as soon as a decision is reached.

Q11: Are we being premature to even be concerned with this? After all, it would appear nothing has been "set in stone", yet?

This is a true statement, yet "discussions" are valuable to all parties, if only to attempt to understand just what the parameters might be, what the 'exact" order is dependent upon, what "exceptions" might be included, and most importantly, under which section of the U.S. Customs Regulations might any type of "order" be given.

Section 3: Payment options on non-retroactive (current) entries

The following payment options are available:

Option1 – ACH/PMS

Importers pay the U.S. Customs and Border Protection (CBP) agency directly through their Automated Clearing House (ACH) account. This may involve daily ACH filings, or Periodic Monthly Statement (PMS) filings.

The advantage of filing via ACH PMS is cost-savings. By using PMS processing, importers can deposit duties on the 15th business day of the month following the month in which the goods are released.

More information about ACH: https://www.cbp.gov/trade/automated/ach

More information about PMS: https://www.cbp.gov/document/guidance/periodic-monthly-statement

Option2 – Wire Transfer

Weekly statements will be forwarded via File Transfer Protocol (FTP) or e-mail each Thursday – wire transfer payment for the statement amount must be received by the following Tuesday.

Option3 – Deposit on Account

A standing deposit amount based on the shipment value for a typical two (2) week period – calculated based on applicable CVD and/or ADD percentages. The standing deposit is held on account throughout the applicable CVD/ADD period. Payments must be made upon receipt of invoice and within standing deposit amount. Payment may be made by wire transfer or company cheque.

If you have questions about either payment option, please contact your Livingston CSM or CFS representative.

Section 4: Bonds

Q12: Will the retroactive CVD affect my continuous bond, if so how?

The applicable entries in the retroactive period were filed as Formal type 01 duty free entries. As these entries are amended via Post-Summary Corrections (PSCs), the entry type will be changed to “03” with applicable case numbers assigned. If the assigned case number is subject to critical circumstances (C-122-858-000 and C-122-858-002), those duties will directly impact your bond.

The bond effective during the time of retro entries subject to CVD will be impacted and potentially saturated based on the volumes, values and applicable CVD rate. This is why importers should be reviewing their current numbers now and gauging whether the existing bond will be good until the ADD is announced or if they have to act now to increase the liability amount and ultimately get a new bond in effect ASAP.

Based on the proposed margins for ADD/CVD, a bond may be deemed insufficient by either the surety or CBP. If deemed insufficient, the existing bond will need to be terminated and a new bond written for a higher liability amount.

In November 2011, changes were made to the bond conditions, which include No Single Entry Bonds for anything under ADD or CVD. Details are as follows:

The final ruling on the change of regulations regarding the practice of accepting bonds during the provisional measures period in Antidumping (ADD) and Countervailing Duty (CVD) investigations is as follows:

The Department of Commerce has amended its regulations governing the effect of an affirmative preliminary determination in ADD or CVD proceedings to establish that the provisional measures will normally take the form of a cash deposit. Requiring that provisional measures take the form of a cash deposit will help to strengthen the administration of the nation's ADD and CVD laws by making importers directly responsible for the payment of ADD and CVD duties.

This Final Rule went into effect November 2, 2011 and applies to all investigations initiated on the basis of petitions filed on or after this effective date.

If your bond is deemed insufficient, the surety company may require the following documents in order to underwrite a bond with a higher limit of liability due to ADD/CVD

- Completed Surety Bond Application
- Completed ADD/CVD questionnaire
- Copy of most current fiscal year end financial statement
- Collateral

Q13: Should I increase my bond?

These are some things to consider before increasing your bond:

Advantages to increasing bond amount:

- Avoid bond insufficiencies and delays at the border.
- Get more time for proper assessment when determination is known.
- Identify the entity that will be importing ADD/CVD and, if multiple parties are on one bond, see if multiple bonds can be written so no impact occurs for the other business units not importing ADD/CVD. For further information regarding this option, speak with your bond provider/broker.

Disadvantages to increasing the amount of bond without rate being known/ final determination:

- Terminating and replacing bond for a liability amount that may not be sufficient for your importing needs based on ADD and CVD rates.
- Collateral provided for new bond with increased liability amount based on estimation of duties (unknown rate/ use rates from previous years when it was applicable).
- Another termination and replacement bond needs to be filed which leads to additional collateral.
- Surety will question a substantial bond increase and may not file until determination is decided due to the liability they will be subject to.

Q14: How is the bond amount determined and in what increments can they be written?

Bond amounts are determined as follows:

The total amount of ordinary Customs duties – including any taxes and fees required by law to be treated as duties – accrued on all merchandise imported during the calendar year prior to the date of bond effective date, plus the estimated amount of any other tax or taxes on the merchandise to be collected by Customs.

CR 113.12(b)(1) (i) and (ii)

Importer Continuous bond (type 1) can be written in increments of 10,000 or 100,000 nearest to 10% of duties, taxes and fees paid by an importer during the year preceding the date of the bond application.

Example 1: $0 to $1,000,000 duties and taxes – the bond liability amount shall be fixed in multiples of 10K nearest to 10% of duties, taxes and fees within an accumulated 12 months.

Example 2: Over $1,000,000 duties and taxes – the bond liability amount shall be fixed in multiples of 100K nearest to 10% of duties, taxes and fees within an accumulated 12 months.

*See Customs Directive 3510-004 for Monetary Guidelines for setting bond amounts.

Q15: If I decide to increase the bond, what is the required process?

The higher the bond amount, the longer the process takes because more parties are involved for the approval process. For bond amounts exceeding $1,000,000, paper submission may be required by the National Finance Center (NFC) and can take five days minimum for processing.

The following documents have to be supplied to the underwriter of your bond:

- Surety bond application and indemnity agreement (1 document).
- General indemnity agreement (if liability amount exceeds $1,000,000).
- Most current fiscal year-end Financial Statements (in English). This should include Income Statement, Balance Sheet, Statement of Cash Flow and any accompanying accounting notes. If you don't have current audited financials, surety has accepted unaudited financials signed by an officer of the company.
- Collateral in the form of Cash (ACH and Cash Wire Transfer), check (certified check, bank check or cashier's check) or instructions for Letters of Credit. Must be a Federal Deposit Insurance Corporation (FDIC) insured U.S. Bank or other pre-approved Canadian bank with a financial rating of 40 or higher.
- Completed Antidumping questionnaire. In the event that you use Avalon surety, contact your representative at Livingston and they will be happy to provide you with the documents you require.

Q16: If I'm not using Avalon as a surety company, what's the process?

You'll need to contact your own surety for them to instruct you on what to do. Similar documents will be required. Please advise broker(s) handling your clearances when new bond is approved so their system can be updated accordingly. Livingston cannot get details pertaining to your continuous bond from NFC or surety involved when we are not the bond holder.

Q17: If I increase my bond, will I need to do it again?

Yes, if you choose to increase bond prior to the determination for both AD/CVD the new liability may be inadequate. Variables include: entry values, duty, taxes and fees.

Once determination is made and if AD/CVD is applicable, the duty deposits are just estimates paid at time of entry and are subject to change with each annual administrative review.

Q18: Will my shipments be held if my bond is saturated?

Yes, if the bond is deemed insufficient by Customs, entries will be rejected. If you deal with multiple brokers who obligate the same bond, they too will receive rejected entries. Contact your bond provider ASAP to confirm what is needed to expedite termination and replacement process, see above for requirements. If Livingston maintains your bond, we can assist you with getting documentation to your surety. If we don't maintain your bond, we'll have minimal details pertaining to your current bond.

Importers can request the termination process be started for their saturated bond, which starts the "clock" on the 15-day termination process. However, they must act quickly with meeting all requirements with surety to ensure that a new bond for appropriate liability amount is written and effective by the 16th day*.

* Termination and Replacement takes 16 calendar days total.

Please note, shipments subject to AD/CVD CANNOT be put on Broker Bond to avoid delays.

With the addition of antidumping duties, CBP is no longer reinstating saturated bonds.

CBP has issued a statement indicating that regardless of the presence of a future bond, an existing bond will no longer be rendered sufficient, as rendering a saturated bond sufficient forces Customs to accept more risk. As an option, CBP has suggested that importers can continue to make entry with single entry bonds.

Single entry bonds

Although a single entry bond is a regulatory option, surety must approve all single entry bonds in advance, and requires full collateral on a per-shipment basis prior to approving a single entry bond. This is a lengthy and costly alternative. Additionally, single entry bonds must be approved and in place prior to initiating movement of a shipment to the border.

If you have not yet secured a new continuous bond to cover future shipments, please do so immediately and, if necessary, initiate actions towards securing an appropriate bond.

Q19. What does the liability amount cover?

The liability amount covers accumulated duty, taxes and fees, also referred to as DTF, within a 12-month period.

For example: If bond was written 4/23/2016, the bond period covers up to 4/22/2017. Bond auto-renews on 4/23/2017. The next bond period would cover through 4/22/2018.

Additional Notes:

Obligations

- Customs – Need adequate bond amount to cover duty, taxes and fees within a 12-month period. Pay DTF to CBP. Respond to insufficiencies promptly.
- Surety – Provide collateral to cover bond liability amount. Expect to provide collateral for future bond periods.
- Broker – The bond premium will increase when liability amount of bond increases. Make arrangements with broker to ensure duties, taxes and fees (DTF) are paid timely avoiding credit issues with Livingston. If you are paying DTF direct to CBP via ACH, let your broker know to ensure account is flagged properly.

Q20: What is collateral, and why is it required?

Collateral could be required by the surety company that is underwriting the importer's bond. When purchasing a Customs bond, a determination is sometimes made that collateral will be required based on several factors:

- The principal's financial background and present financial condition
- The principal's importing history
- The dollar limit of the surety bond
- The nature of the imported commodities (ex. Subject to anti-dumping and counter-vailing)

The bond guarantees that an importer will meet certain financial obligations to the government. If the importer fails to meet those obligations, the surety will pay the government on the importer's behalf and then immediately seek reimbursement from the importer. Collateral is required when the surety believes that the risk of loss under the bond and/or potential inability to collect reimbursement from the importer are at a greater than acceptable levels. One of the most common situations where collateral is required involves commodities subject to anti-dumping and counter-vailing duties due to the volatile nature and unknown risk of the case.

Q21: Is the required bond amount or collateral required affected when I pay CVD to CBP on each entry?

No. Collateral secures the bond with the surety when they agree to underwrite the bond given they will be liable for the bond.

CBP requires the bond liability to account for a 12-month accumulation of estimated duty, taxes and fees with the understanding that the importer will pay in a timely manner. The purpose behind the bond is to insure that CBP receives any future moneys that may become due on the importation. The bond does not exist solely to protect revenue due within 15 or 45 days of release; it serves to protect any revenue that may become legally due at any point for that entry.

Q22: If collateral is required for CVD, when will it be released?

Collateral will be released 90 days after the last entry period liquidates within a bond period. Liquidation for regular entries not subject to AD/CVD can take up to 314 days from time of entry, but for ADD/CVD entries, it can take years for liquidation.

For example: If the bond is effective 5/22/17, it covers up to 5/21/18 and will auto-renew on 5/22/18 starting another bond period. If collateral was obtained 5/22/17 for first bond period, all entries must liquidate before surety releases the collateral.

Q23: What is stacking?

Stacking is when collateral is obtained for each bond period. You can have the same bond number, but every year on the renewal date starts another bond period for 12 months. Collateral is obtained for each bond period and will be released when entries within that 12-month period are liquidated.