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Expedited Reviews/Round1
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Issues and Decision Memorandum: Final Results of Expedited Review of 3 Companies Covered by the August 14, 2002 Notice of Preliminary Results of the Countervailing Duty Expedited Reviews of Certain Softwood Lumber Products from Canada

SUMMARY AND BACKGROUND

On August 14, 2002, the Department published in the Federal Register the Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada, 67 FR 52945 (August 14, 2002) (Preliminary Results) covering 18 respondents. Subsequently, the Department verified the information provided by three respondents, Interbois Inc. (Interbois), Les Moulures Jacomau 2000, Inc. (Jacomau), and Richard Lutes Cedar, Inc. (RLC). On October 22, 2002, the Department issued verification reports for Interbois, Jacomau and RLC.¹ On November 5, 2002, the Department published in the Federal Register the Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada, 67 FR 67388 (November 5, 2002) (Final Results) covering 13 respondents. Interbois, Jacomau, RLC were not included in the Final Results in order to provide interested parties with the opportunity to comment on the October 22, 2002, verification reports.

¹ See Verification of Interbois, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Interbois Verification Report), Verification of Les Moulures Jacomau 2000, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Jacomau Verification Report), and Verification of Richard Lutes Cedar, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (RLC Verification Report), dated October 22, 2002.

On October 31, 2002, the Department received from petitioners comments on the Interbois Verification Report and the RLC Verification Report. Petitioners did not comment on the Jacomau Verification Report. The Department received timely rebuttal comments from Interbois on November 7, 2002, and from RLC on November 22, 2002. This memorandum addresses these comments.

We recommend that you approve the positions we have developed in the “Analysis of Comments” section below. If approved, we intend to issue the final results of expedited reviews for these three respondents, based on these positions. Below is a complete list of the issues for which we received comments:

Comment 1: Verification of RLC’s estimated input data

Comment 2: Verification of the origin of RLC’s logs and lumber

Comment 3: Verification of RLC’s estimated sales data

Comment 4: Interbois lumber output

ANALYSIS OF COMMENTS

Comment 1: Verification of RLC’s estimated input data

Citing the RLC verification report, petitioners state that the following data reported by RLC are estimates: 1) total quantity of logs and lumber purchased, 2) average price paid for logs, 3) average price paid for lumber, and 4) average price paid for cutting rights. Petitioners contend that the Department should not rely on these data to calculate a net subsidy rate because it cannot be verified. Specifically, petitioners argue RLC could not provide sufficient evidence to support its reported volumes of log and lumber purchases because it does not maintain records of payments to suppliers that differentiate between logs and lumber. In addition, petitioners contend that the Department cannot rely on the “estimated” input prices because RLC does not maintain records of such data and, therefore, the data cannot be verified.

RLC argues that it was fully cooperative with the Department throughout this entire proceeding, including verification. Furthermore, RLC contends that the Department was provided with all of the company records that it maintains, with respect to the input sourcing data obtained during verification. Specifically, RLC argues that the data for log and lumber purchases obtained during verification were evidenced by records of payments RLC made to its log and lumber suppliers. In addition, RLC asserts that the differentiation between log and lumber purchases was supported by statements made by Bob Rose (one of its lumber suppliers during the period of review (POR)) and receipts issued by Bob Rose. RLC suggests that the Department could consider treating all purchases from Bob Rose and Larry Rose as lumber purchases if it is not satisfied with the relevant record evidence.

RLC contends that the average price it paid for logs per board foot was derived from computer calculations, which were reviewed by the Department during verification. RLC also claims that it paid only one price per board foot for lumber during the POR. Lastly, RLC argues that the data obtained

during verification were verified to the extent permitted by RLC's records.

Department's Position:

We agree with RLC that the input sourcing data obtained during verification were verified to the extent permitted by RLC's records. The RLC Verification Report states, "RLC does not maintain records of the logs and lumber it consumes for production because the majority of its inputs are sourced from lands privately owned by RLC." In addition, RLC's records of log and lumber purchases are limited to payments to suppliers, which are recorded in the general ledger. In other words, RLC does not record the per-unit price for, or quantity of, logs and lumber it purchases or consumes. Rather, RLC records the total value of each input purchase. Therefore, RLC's reported input sourcing (*i.e.*, input consumption) data were estimated by company officials based on the records it maintains in the normal course of business. At the beginning of verification, RLC informed the Department's that it had inadvertently used fiscal year 2000 and 2001 data to estimate input consumption for the April 1, 2000, through March 31, 2001 POR. Therefore, during verification, the verifiers revised RLC's reported sourcing/consumption data to reflect the POR using the information contained in RLC's accounting records (*i.e.*, the general ledger). See RLC Verification Report at 2-3.

With respect to the differentiation between logs and lumber for purchases from its suppliers, Bob Rose and Larry Rose, we note that RLC does not maintain records of the price, or type, of input it purchases in the normal course of business. Therefore, RLC estimated the differentiation between logs and lumber obtained during the POR. The verifiers were satisfied that the suppliers' statements corroborated RLC's claim distinguishing log and lumber purchases.

According to the RLC Verification Report, RLC does not maintain records of its purchase prices for logs or lumber. Therefore, RLC estimated prices per board foot for logs (cut or uncut) and per board foot for lumber based on its standard business practices. These estimates were made by company officials with intimate knowledge of RLC's business operations.

Section 776(a)(2) of the Tariff Act of 1930, as amended, effective January 1, 1995 (the Act), by the Uruguay Round Agreements Act (URAA), provides that the Department shall apply "facts otherwise available" if, inter alia, a respondent (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified.

Section 782(e) of the Act further provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but does not meet all the applicable requirements established by the Department if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the

Department with respect to the information, and (5) the information can be used without undue difficulties.

RLC's (1) differentiation between logs and lumber obtained during the POR and (2) estimates of the per-unit prices RLC pays for logs, lumber and cutting rights were submitted by the deadline established for submission but do not satisfy all of the requirements for use pursuant to section 782(e) of the Act. Specifically, this information was not fully verified (due to the limitations of RLC's accounting records). Consequently, the Department must apply "facts otherwise available," under Section 776(a)(2) of the Act.

In determining the appropriate facts to apply under Section 776(a)(2) of the Act, we analyzed the Department's requests for information issued to RLC throughout the course of this proceeding, including the Verification Outline attached to the September 18, 2002 *Letter from Melissa G. Skinner to Richard Lutes Cedar RE: Verification of Information Provided for the Expedited Review of the Countervailing Duty Order on Certain Softwood Lumber from Canada* (collectively, Verification Outline). See also the July 22, 2002 Supplemental Questionnaire (July supplemental). In addition we analyzed RLC responses to such requests and its participation in verification. We found that RLC submitted to the Department requested information within the established deadlines in its June 21, 2002 Request for Expedite Review (review request).

In the "General Instructions and Background Information" section of July supplemental issued to RLC, the Department for first time requested RLC to "identify your source(s) of information. . . and. . . provide with your response copies of all source materials." On July 25, 2002, RLC submitted a supplemental questionnaire response (July supplemental response) within the established deadline, but did not provide the requested source documentation. This was the only deficiency in RLC's July supplemental response. The Department, however, did not inform RLC of this deficiency. Consequently, there is no basis to find that RLC did not act to the best of its ability in providing the information requested in the July supplemental response.

In the Verification Outline, the Department stated, "company accounting systems vary widely, and some {verification} methods may not be practicable for a particular firm's accounting system. In these instances, the company should review the goal of the particular section of the verification {outline} and determine the best way to accomplish it through its records." In addition, the Department requested RLC to "provide all appropriate source documentation from your accounting system and any other relevant source" with respect to input sourcing information. See Verification Outline at pages 1 and 3. Because RLC was not informed of the deficiencies in its July supplemental questionnaire response, the Department did not clearly communicate the importance of such information. In addition, the Verification Outline clearly afforded RLC flexibility, commensurate with its own accounting system, with respect to the type and extent of source documentation required by the Department. Because RLC's accounting records are extremely limited with respect to input sourcing information, RLC relied on "other relevant sources," such as statements by its suppliers, to support the methodology used to calculate the reported input sourcing data. In addition, RLC afforded the verifiers full and unfettered access to all of its records. In sum, we find that RLC cooperated to the best of its ability with respect

to verification and the information requested in the Verification Outline.

Given that RLC cooperated to the best of its ability, we believe that neutral facts available is appropriate. We have used, as neutral facts available, the following information to calculate the quantity of lumber and logs consumed during the POR: 1) differentiation between the quantity of logs and lumber purchased, 2) average price paid for logs, 3) average price paid for lumber, and 4) average price paid for cutting rights. Information on the differentiation between the quantity of logs and lumber purchased was obtained during verification. The average prices paid for logs, lumber, and cutting rights were estimated by RLC officials.

To calculate the total quantity of lumber purchased during the POR, we divided total POR payments to the lumber suppliers by 2. We then divide this value by the average price (estimated by company officials) RLC pays for lumber to calculate the quantity of lumber purchased during the POR. The remainder of the payments listed in the general ledger were treated as payments for logs and the rights to cut logs from private land. We then calculated the quantity of logs purchased and cut by dividing the total POR payments for logs and cutting rights by the average price (estimated by company officials) RLC pays for logs. To estimate the total quantity of logs and lumber consumed by RLC during the POR, we divided the total POR sales value (delivered) by the estimated average price RLC pays for logs from its suppliers. We used the estimated price for logs because the majority of inputs RLC consumes for production is logs, not lumber. We subtracted the quantity of logs and lumber purchased from the estimated consumption figure to estimate the quantity of logs RLC cut from its own land. See RLC Verification Report at Attachment 2.

With respect to RLC's suggestion of treating all inputs acquired from its suppliers as lumber, there is no record evidence to support doing so. Furthermore, treating all purchased inputs as lumber would have no meaningful effect on our calculations and RLC's rate would continue to be de minimis.

Comment 2: Verification of the origin of RLC's logs and lumber

According to petitioners, there is no record evidence supporting RLC's claim that it sourced logs and lumber solely from private, non-Crown lands. Citing an August 1, 2002 letter from Dewey Ballantine to the Department (*Comments Concerning the Countervailability of Canada's Domestic Processing Requirements and Log Export Restrictions*) (August 2001 Letter), petitioners contend that, contrary to RLC's claim, it is likely that RLC sources logs and lumber from Crown lands. Specifically, petitioners contend that 31 percent of lumber producers in Ontario regularly transport logs more than 100 kilometers, and nearly 12 percent more than 100 miles. In addition, petitioners note that, according to the Ministry of Natural Resources of Ontario ("MNRO"), 35.6 percent of productive forests in southern and central Ontario (where RLC is located) are Crown-owned and contain the cedar species of trees.² Therefore, petitioners conclude, there is a "high probability" that RLC's cedar logs come from Crown lands.

² As stated in the RLC Verification Report at 1, all of RLC's products are made of cedar wood.

RLC contends that there is no record evidence to support petitioners' claim that RLC sourced logs or lumber from Crown lands. RLC claims that it has never obtained logs or lumber from Crown lands. Furthermore, RLC argues that it is unaware of any cedar sources in deciduous forests because cedar does not usually grow among deciduous trees. According to RLC, it is required by law to maintain a log book for any truck that travels beyond a 100-mile radius. RLC claims that it maintains such a log book only for its delivery truck, which is used exclusively to transport final products to customers. RLC maintains that none of the trucks it uses to obtain logs or lumber travel outside of a 50-mile radius from its facilities. Furthermore, RLC claims that it does not obtain logs or lumber outside of a 50-miles radius from its facilities.

Department's Position:

We find the information provided by RLC regarding the origin on the logs and lumber it obtained during the POR is supported by the information on the record, was fully verified, and should be used in the calculation of RLC's final net subsidy rate. Furthermore, there is no record evidence undermining RLC's claim that all of its inputs were sourced from non-Crown lands that were within a 50-mile radius. With respect to log transport distances, RLC maintains that it does not obtain logs or lumber from outside a 50-mile radius of its facilities because it is not economical to do so. Petitioners dispute this claim, citing the log transport distances contained in the August 2001 Letter. However, those figures are specific to lumber producers located in the interior region of British Columbia and have no relationship to lumber producers in Ontario.

RLC claims that it maintains log books that support its claim that it does not obtain logs or lumber outside of its 50 mile radius. We note that the verifiers visited RLC-owned lands and reviewed land deeds to verify that RLC sources cedar from its own lands. In addition, the verifiers met with one of RLC's suppliers and confirmed RLC's statements regarding input sourcing.

With respect to petitioners' contention that there is no record evidence supporting RLC's claim that it sourced logs and lumber solely from private, non-Crown lands, we disagree. Based on the MNRO Annual Report on Forest Management (MNRO Report), RLC is situated on the border of the Deciduous and Great Lakes-St. Lawrence Forest regions of southern Ontario. See RLC Verification Report, Attachment 3. The MNRO Report states, "0.003 percent of the Deciduous Forest Region is owned by the Crown," and "in the southern part of the Great Lakes-St. Lawrence Forest, there is a large amount of privately owned forests. . ." The Department concluded that "it is very unlikely that cedar. . . is cut from Crown lands within a 50 mile radius of RLC's facilities." See RLC Verification Report at 2. Petitioners assert that it is highly probable that RLC obtains inputs from Crown lands because the Crown owns 35.6 percent of productive forests in southern and central Ontario. However, that figure is based on a region of Ontario (the Deciduous and Great Lakes-St. Lawrence Forest regions in their entirety) that extends far beyond even a 100-mile radius from RLC. In addition, this region includes the northern and central part of the Great Lakes-St. Lawrence Forest region which is well beyond a 100-mile radius from RLC, and "the land is predominately owned by the Crown." See MNRO Report at 8. Therefore, based on record evidence, we find that it is reasonable to

conclude that the 35.6 percent of land owned by the Crown and referenced by the petition is located in the northern and central portion of the Great Lakes-St. Lawrence Forest region and not within a 100- or 50-mile radius from RLC.

Comment 3: Verification of RLC's estimated sales data

Petitioners argue that the Department cannot rely on RLC's estimated sales data to calculate its net subsidy rate.

RLC contends that it was fully cooperative with the Department throughout this entire proceeding, including verification. Furthermore, RLC contends that the Department was provided with all of the company records that RLC maintains relating to the sales data obtained during verification. Specifically, RLC states that the verifiers reviewed invoices, accounting records and tax statements to verify its sales data.

Department's Position:

According to the RLC Verification Report, the reported sales data were based on estimates (fiscal years 2000 and 2001) and included delivery charges. However, the sales data obtained during verification were based entirely on RLC's accounting records, not estimates, were fully verified, and reflect the POR. See RLC Verification Report at 1-2. Therefore, we have relied on the information obtained during verification to calculate RLC's net subsidy rate.

Comment 4: Interbois lumber output

Petitioners contend that Interbois inappropriately classified rough lumber products as non-subject merchandise. Therefore, petitioners argue, the Department should recalculate Interbois's net subsidy rate using a total lumber production figure that includes rough lumber products.

Interbois argues that all of its sourcing/output and sales data were verified as complete and accurate by the Department and that petitioners' claim regarding its lumber output is not supported by the record evidence. Interbois also notes that there would be no changes to the net subsidy calculation if its outputs were reclassified in accordance with petitioners' claim because the reclassification would not change Interbois' total POR sales (the denominator in the calculation).

In addition, Interbois contends that its rough lumber products were appropriately treated as non-subject merchandise, in accordance with paragraph 5 of the scope of the reviews which specifically excludes "U.S. origin lumber shipped to Canada for minor processing. . . [where] the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding. . . ." See Final Results at 67389. Interbois states that all of its rough lumber products qualify for this exclusion because they were produced solely from U.S.-sourced inputs and subject to kiln drying only.

Interbois concludes that the information contained in the Interbois Verification Report is accurate and

fully verified and, therefore, should be relied upon for the final results calculations for Interbois.

Department's Position:

According to the Interbois Verification Report, the Department noted few discrepancies with respect to Interbois' reported sales and sourcing data. During verification, the Department made revisions to more accurately reflect freight charges and to correct "one minor discrepancy with respect to the total lumber purchased from U.S. suppliers." See, Interbois Verification Report at 2-3. Therefore, the Department concluded that Interbois' sales (*i.e.*, output) and sourcing data were verified as accurate and complete. See Interbois Verification Report at Attachment 2. As such, we agree with Interbois that it did not understate its sales data and that the information contained in the Interbois Verification Report is accurate, verified, and should be used to calculate Interbois' final net subsidy rate. In addition, we agree with Interbois that a reclassification of certain Interbois sales as subject merchandise would not alter its total POR sales figure (contained in the Interbois Verification Report) or its final net subsidy rate.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and calculating the company-specific net subsidy rates accordingly. If these recommendations are accepted, we will publish the final results of this administrative review in the Federal Register.

Agree_____ Disagree_____

Joseph A. Spetrini
Acting Assistant Secretary for
Import Administration

(Date)