



DEPARTMENT OF COMMERCE

## International Trade Administration

[C-122-858]

### Certain Softwood Lumber Products from Canada: Notice of Reinstatement of Exclusion from the Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of  
Commerce.

**SUMMARY:** On November 20, 2023, the U.S. Court of International Trade (CIT) issued an order in *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations v. United States, et. al.*, Consol. Ct. No. 19-00122 (Slip Op. 23-163), reinstating the exclusion of Les Produits Forestiers D&G Ltée (D&G), Marcel Lauzon Inc. (MLI), North American Forest Products Ltd. (NAFP) (located in New Brunswick), and Scierie Alexandre Lemay & Fils Inc. (Lemay), and their cross-owned companies, from the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada. In accordance with the CIT's order, Commerce is issuing this notice excluding from the CVD order D&G, MLI, NAFP, and Lemay, and their cross-owned companies. Commerce will also direct U.S. Customs and Border Protection (CBP) to discontinue suspension of liquidation and the collection of cash deposits for all shipments of softwood lumber produced and exported by D&G, Lemay, MLI, and NAFP, entered, or withdrawn from warehouse, for consumption on or after August 28, 2021, to liquidate all suspended entries of shipments of softwood lumber produced and exported by D&G, Lemay, MLI, and NAFP without regard to countervailing duties; and to refund all cash deposits of estimated countervailing duties collected on all such shipments.

**DATES:** Applicable August 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations,  
Office III, Enforcement and Compliance, International Trade Administration, U.S. Department

of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793.

## **SUPPLEMENTARY INFORMATION:**

### Background

On January 3, 2018, Commerce published the CVD order on softwood lumber from Canada.<sup>1</sup> On July 5, 2019, Commerce published its *Final Results of Expedited Review* for the Order.<sup>2</sup> In the *Final Results of Expedited Review*, Commerce found that five companies subject to the review had *de minimis* subsidy rates, and therefore, were excluded from the Order.<sup>3</sup> The five companies are D&G, Lemay, MLI, NAFP, and Roland Boulanger & Cie Ltée (Roland).<sup>4</sup>

The Committee Overseeing Action for Lumber International Trade Investigations or Negotiations appealed Commerce's *Final Results of Expedited Review*. On November 19, 2020, the CIT remanded the *Final Results of Expedited Review* to Commerce for reconsideration of the statutory basis upon which Commerce promulgated its CVD expedited review regulations at 19 CFR 351.214(k) to determine individual subsidy rates for companies not individually examined in an investigation.<sup>5</sup>

In its *Final Remand*, issued in February 2021, Commerce determined that section 103(a) of the Uruguay Round of Agreements Act, as well as the other legal authorities presented to the CIT, cannot be the basis for the promulgation of the CVD expedited review regulations under 19 CFR 351.214(k) and, thus, Commerce lacks the statutory authority to conduct CVD expedited

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<sup>1</sup> See *Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) (*Order*).

<sup>2</sup> See *Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019) (*Final Results of Expedited Review*), and accompanying Issues and Decision Memorandum.

<sup>3</sup> *Id.*, 84 FR at 32122.

<sup>4</sup> *Id.* While Commerce calculated a *de minimis* rate for Roland and its cross-owned affiliates, those companies are not a party to the litigation nor to the Court's order ordering this notice.

<sup>5</sup> See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Court No. 19-00122, Slip Op. 20-167 (CIT 2020).

reviews.<sup>6</sup> The CIT sustained Commerce's *Final Remand*.<sup>7</sup> Consequently, Commerce reinstated the excluded companies in the *Order* prospectively, effective August 28, 2021, and imposed a 14.19 percent *ad valorem* cash deposit requirement based on the all-others rate from the investigation.<sup>8</sup> The Canadian parties appealed the CIT's decision.<sup>9</sup>

On April 25, 2023, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) reversed the CIT's August 18, 2021 decision and held that Commerce has the statutory authority to adopt the CVD expedited review process, and remanded for further proceedings necessitated by its holding that such statutory authority exists.<sup>10</sup>

On October 6, 2023, D&G, Lemay, MLI, and NAFP filed a motion with the CIT requesting reinstatement of their exclusion from the *Order* during the pendency of this litigation.<sup>11</sup> On November 20, 2023, the CIT granted the motion, finding that there was an equitable basis for reversing the actions of its August 18, 2021 decision, and ordered the reinstatement of exclusion from the *Order*, effective August 28, 2021, for D&G, Lemay, MLI, and NAFP.<sup>12</sup> The CIT also ordered Commerce to instruct CBP to discontinue the suspension of liquidation and the collection of cash deposits of estimated countervailing duties on all shipments of softwood lumber produced and exported by D&G, Lemay, MLI, and NAFP, entered or withdrawn from warehouse, for consumption on or after August 28, 2021, and to instruct CBP to

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<sup>6</sup> See *Final Results of Redetermination Pursuant to Court Remand, Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Court No. 19-00122, Slip Op. 20-167 (CIT 2020), dated February 17, 2021 (*Final Remand*), available at <https://access.trade.gov/resources/remands/20-167.pdf>.

<sup>7</sup> See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Court No. 19-00122, Slip Op. 21-104 (CIT 2021).

<sup>8</sup> See *Certain Softwood Lumber Products from Canada: Notice of Court Decision Not in Harmony with the Results of Countervailing Duty Expedited Review; Notice of Amended Final Results*, 86 FR 48396 (August 30, 2021) (*Amended Final Results of Expedited Review*).

<sup>9</sup> The Canadian parties are D&G, Lemay, MLI, NAFP, Fontaine Inc., Mobilier Rustique (Beauce) Inc., Government of Canada, Government of New Brunswick, and Government of Québec.

<sup>10</sup> See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations v. United States*, 66 F.4th 968 (Fed. Cir. 2023).

<sup>11</sup> See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations v. United States*, Consol. Ct. No. 19-00122 (Slip Op. 23-163) (CIT Nov. 20, 2023), citing motion filed by D&G, Lemay, MLI, and NAFP.

<sup>12</sup> *Id.*

liquidate, without regard to countervailing duties, all suspended entries of shipments of softwood lumber produced and exported by D&G, Lemay, MLI, and NAFF.<sup>13</sup>

#### Reinstatement of Exclusion from the Order

Because of the CIT's order, Commerce is reinstating the exclusion from the *Order* of D&G, Lemay, MLI, and NAFF, effective August 28, 2021. Commerce's practice with respect to the exclusion of companies from a CVD order is to exclude the subject merchandise both produced and exported by those companies.<sup>14</sup> As a result, we will instruct CBP to discontinue the suspension of liquidation and the collection of cash deposits of estimated countervailing duties on all shipments of softwood lumber produced and exported by D&G, Lemay, MLI, and NAFF, entered, or withdrawn from warehouse, for consumption on or after August 28, 2021. In addition, we will instruct CBP to liquidate, without regard to countervailing duties, all suspended entries of shipments of softwood lumber produced and exported by D&G, Lemay, MLI, and NAFF, and to refund all cash deposits of estimated countervailing duties collected on all such shipments. Subject merchandise that D&G, Lemay, MLI, and NAFF export but do not produce, as well as merchandise D&G, Lemay, MLI, and NAFF produce but is exported by another company remain subject to the *Order*.

#### Notification to Interested Parties

This notice is issued and published in accordance with section 516A(c) of the Tariff Act of 1930, as amended.

Dated: November 30, 2023.

**Abdelali Elouaradia,**  
*Deputy Assistant Secretary*  
*for Enforcement and Compliance.*

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<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016).