



DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-858]

Certain Softwood Lumber Products from Canada: Notice of Amended Final Results of
Countervailing Duty Expedited Review; Notice of Exclusion from Countervailing Duty Order

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

SUMMARY: On January 21, 2025, the U.S. Court of International Trade (CIT) issued an order
in *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations,*
et al., v. United States, et al., Consol. Ct. No. 19-00122 (Slip Op. 25-8) (CIT 2025)

(*COALITION V*), partially sustaining the U.S. Department of Commerce's (Commerce) final
results of remand redetermination (remand redetermination), concerning the countervailing duty
(CVD) order on certain softwood lumber products (softwood lumber) from Canada. In
particular, the CIT sustained Commerce's remand redetermination calculating a 0.88 percent *de*
minimis subsidy rate for Fontaine, Inc. and its cross-owned affiliates Gestion Natanis Inc., Les
Placements Jean-Paul Fontaine Ltee, and Placements Nicolas Fontaine Inc. (collectively,
Fontaine) and determination to exclude subject merchandise produced and exported by Fontaine
from the CVD order on softwood lumber from Canada. On March 13, 2025, the CIT issued an
order severing *Fontaine, Inc., et al., v. United States, et al.*, Ct. No. 19-00154, (*Fontaine v. US*)
from *COALITION*. The CIT further issued its judgment and ordered that Fontaine's enjoined
entries be liquidated in accordance with the final court decision. On April 18, 2025, pursuant to
CIT Rule 60(b)(6), the Court further ordered that Commerce: (1) publish an amended final
results of the CVD expedited review with respect to Fontaine that reflects the calculated 0.00
percent cash deposit rate for Fontaine, and (2) ensure that subject entries enjoined in the action
are liquidated in accordance with the final court decision, including all appeals, consistent with
the requirements of section 516A(e) of the Tariff Act of 1930, as amended. Accordingly,

Commerce is issuing these amended final results of CVD expedited review reflecting the zero percent cash deposit rate determined in Commerce's remand redetermination. Moreover, we are confirming that Commerce will also direct CBP to liquidate entries enjoined in this action of softwood lumber produced and exported by Fontaine, entered, or withdrawn from warehouse, for consumption, on or after April 28, 2017, in accordance with the final court decision in this case, including all appeals.

DATES: Applicable April 28, 2025.

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.¹ On July 5, 2019, Commerce published its *Final Results of Expedited Review* for the *Order*.² In the *Final Results of Expedited Review*, Commerce calculated an individual subsidy rate of 1.26 percent (*i.e.*, above *de minimis*) for Fontaine.³

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

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

² 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.

³ *Id.*, 84 FR at 32122.

CFR 351.214(k)⁴ to determine individual subsidy rates for companies not individually examined in an investigation.⁵

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 lacked the statutory authority to conduct CVD expedited reviews.⁶ The CIT sustained Commerce's *Final Remand* in *COALITION II*.⁷ Consequently, effective August 28, 2021, Commerce removed Fontaine's individual subsidy rate of 1.26 percent *ad valorem* and instead imposed a 14.19 percent *ad valorem* cash deposit requirement based on the all-others rate from the investigation.⁸ The Canadian parties appealed the CIT's decision.⁹

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.¹⁰

⁴ The CVD expedited review regulation was initially promulgated as 19 CFR 351.214(k). See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27321–22, 27396 (May 19, 1997). Section 351.214(k) of Commerce's regulations was later renumbered to § 351.214(l). *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52373 (Sept. 20, 2021).

⁵ See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, 483 F. Supp. 3d 1253 (CIT 2020) (*COALITION I*).

⁶ 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>.

⁷ See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, 535 F. Supp. 3d 1336 (CIT 2021) (*COALITION II*).

⁸ 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*).

⁹ The Canadian parties are Les Produits Forestiers D&G Ltée, Marcel Lauzon Inc., North American Forest Products Ltd., Scierie Alexandre Lemay & Fils Inc., Fontaine, Mobilier Rustique (Beauce) Inc., Government of Canada, Government of New Brunswick, and Government of Québec.

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

On April 22, 2024, the CIT sustained, in part, and remanded, in part, certain claims concerning Commerce's *Final Results of Expedited Review* not addressed in *COALITION I*.¹¹ Relevant here, the CIT addressed Commerce's decision to rely on Fontaine's tax returns that preceded the period of review (POR) to calculate the benefit received for certain subsidy programs received during the POR.¹² The CIT remanded the issue to Commerce for reconsideration or further explanation.¹³

On September 10, 2024, Commerce issued its final results of redetermination pursuant to court remand in *COALITION IV*.¹⁴ Pursuant to the Court's order, Commerce reconsidered the information on its record with respect to Fontaine's tax returns.¹⁵ On remand, Commerce reconsidered its determination in the *Final Results of Expedited Review* and instead relied on Fontaine's tax returns filed during the POR.¹⁶ Thus, in its remand redetermination, Commerce recalculated Fontaine's benefit for the subsidy programs at issue and overall subsidy rate.¹⁷ As a result of the re-calculations on remand, Commerce determined that Fontaine's overall subsidy rate was *de minimis* and, thus, Fontaine should be excluded from the *Order* should the CIT sustain the remand redetermination in a final and conclusive decision.¹⁸ In the event of a final and conclusive determination, Commerce stated that it would 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 Fontaine, entered, or withdrawn from warehouse, for consumption on or after April 28, 2017. Commerce further stated that upon a final and conclusive CIT decision it would instruct CBP to liquidate, without regard to

¹¹ See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al., v. United States, et al.*, 701 F. Supp. 3d 1334 (CIT 2024) (*COALITION IV*).

¹² *Id.* at 1360.

¹³ *Id.* at 1362-63.

¹⁴ 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. 24-50 (CIT 2024), dated September 10, 2024 (*Remand Redetermination*).

¹⁵ *Id.* at 19-21.

¹⁶ *Id.*

¹⁷ *Id.* at 21.

¹⁸ *Id.* at 22.

countervailing duties, all suspended entries of shipments of softwood lumber produced and exported by Fontaine, and to refund all cash deposits of estimated countervailing duties collected on all such shipments.

On January 21, 2025, in *COALITION V*, the CIT sustained Commerce's remand redetermination with respect to Commerce's recalculation of Fontaine's overall subsidy rate to 0.88 percent *ad valorem*, or *de minimis*.¹⁹

On March 10, 2025, Fontaine filed a motion requesting that the CIT sever the consolidated case in Court No. 19-122 and enter judgment on behalf Fontaine in severed Court No. 19-00154.²⁰

On March 13, 2025, the CIT granted the motion, ordering that subject entries enjoined under Court No. 19-00154 must be liquidated in accordance with the final court decision, including all appeals, consistent with the requirements in section 516A(e) of the Tariff Act of 1930.

On April 8, 2025, Fontaine filed a motion seeking that Commerce give effect to the CIT's order issued on March 13, 2025, ahead of the conclusion of the appeals period. Specifically, Fontaine requested that the CIT direct Commerce to publish a notice of amended final results, set Fontaine's cash deposit rate to 0.00 percent, exclude Fontaine from the *CVD Order*, and direct CBP to refund Fontaine's cash deposits without regard to CVD duties.

On April 18, 2025, the CIT granted Fontaine's request for relief, in part. The CIT ordered Commerce to publish amended final results of CVD expedited review with respect to Fontaine that reflect the 0.00 percent cash deposit rate determined for Fontaine in Commerce's remand redetermination. The CIT also held that subject entries enjoined in this litigation should be liquidated in accordance with the CIT's final court decision, including all appeals, consistent with the requirements in section 516A(e) of the Tariff Act of 1930, as amended.

¹⁹ See *COALITION V* at 18-21.

²⁰ On November 12, 2019, the CIT consolidated Court No. 19-00154 with Court No. 19-00122.

Amended Final Results and Exclusion from the Order

On March 13, 2025, the CIT entered final judgment sustaining Commerce's remand redetermination calculating a 0.88 percent, *de minimis*, subsidy rate for Fontaine and determining to exclude Fontaine from the CVD Order, effective April 28, 2017. 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.²¹ As a result, Commerce is excluding subject merchandise produced and exported by Fontaine²² from the CVD Order, effective April 28, 2017, and will instruct to CBP to apply the zero percent cash deposit rate determined on remand.

Liquidation of Suspended Entries

In accordance with the CIT's April 18, 2025 order, in the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate entries enjoined in this action of softwood lumber produced and exported by Fontaine, entered, or withdrawn from warehouse, for consumption, on or after April 28, 2017, without respect to countervailing duties.

At this time, Commerce remains enjoined by the CIT from liquidating certain entries. These entries will remain enjoined pursuant to the terms of the injunction during any appeals process. Lastly, subject merchandise that Fontaine exports but does not produce, as well as merchandise Fontaine produces but is exported by another company, remain subject to the Order.

Dated: April 28, 2025.

Abdelali Elouaradia,
Deputy Assistant Secretary
for Enforcement and Compliance.

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²¹ 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).

²² See *Remand Redetermination at 23; see also CVD Order*.