

# Softwood Lumber

## Administrative Review

In regard to the anti-dumping and countervailing duty orders for softwood lumber (SWL), and according to regulations, affected parties need to file an application for administrative review to the Department of Commerce (Commerce) if they wish to be part of it.

Further to the Federal Register publication dated January 5, 2021, the Department of Commerce has noted their intent to conduct an Administrative Review on Softwood Lumber from Canada. The regulatory deadline for submission for any application is January 31, 2021. The following are pertinent questions that you may have, or points that you wish to consider.

### Q1. What is an Administrative Review?

A1. An Administrative Review is Commerce's opportunity to seek and obtain sales and cost information from exporters or producers to determine the exact antidumping rate and countervailing duties rate for entries during the period of review, in this case from January 1, 2020 through December 31, 2020 for both Antidumping and Countervailing duty cases.

When merchandise covered by an antidumping and/or countervailing duty order enters the United States, the importer is required to submit cash deposits for estimated antidumping duties. The amount of the estimated duties is based on the last actual antidumping and/or countervailing duty rate applied to the exporter or producer of the merchandise.

In a review of antidumping and countervailing duties by Commerce, if the actual antidumping and/or countervailing duty rate is lower than the estimated rate, Commerce will instruct Customer and Border Protection (CBP) to refund the overpayment plus interest.

If the actual antidumping and/or countervailing duty rate is higher than the estimated rate, Commerce will instruct CBP to bill the importer for the difference plus interest. In the instance of SWL, requests must be filed and received by Commerce by January 31, 2021. In addition, the requests must be served to all interested parties on the service list.

### Q2. What are my choices?

A2. (1) Opt out (Do nothing), (2) Opt in (Apply for Administrative Review).

### Q3. What are the consequences of opting out? (Doing nothing)

A3. If no administrative review is requested, all unliquidated entries of the subject merchandise will be considered liquidated as entered. That is, the cash deposit rate will be presumed to be the actual dumping or subsidy rate. Further, the cash deposit rates for all non-reviewed companies remain the same if the exporter or producer does not participate in an administrative review.

### Q4. What are the consequences of opting in? (Applying for an administrative review)

A4. While waiting for Commerce's decision in an annual review, any liquidation of entries subject to antidumping and/or countervailing duties will be suspended by CBP. By opting in, you are considered a voluntary respondent and

the liquidation of your entries will remain suspended pending the outcome of the administrative review. At the end of the review, Commerce will issue a final assessment rate and will instruct CBP to liquidate all unliquidated entries of the subject merchandise at the final assessment rates determined. The final liability may differ from the amount deposited only if the exporter or producer participates in the administrative review.

## **Q5. What if I opt-in and am chosen?**

A5. Exporters or producers that participate (opt in) and are chosen for the administrative review are considered mandatory respondents. They will be subject to the same requirements as an exporter or producer initially selected by Commerce for individual examination.

They will also be required to submit answers to any, and all, requests for information from Commerce.

This third administrative review will cover, as appropriate, entries, exports, or sales during the period of January 1, 2020 to December 31, 2020. Based on the information submitted, Commerce will determine the final assessment rate and calculate the total amount of duties that are owed on entries during the period of review (POR).

The final assessment rate then remains in effect for all future entries until the publication of the final results of the next administrative review in which that exporter or producer participates.

It is important to respond as requested fully and accurately. Those who opt in and do not properly and timely respond may be considered to have impeded the process and therefore receive unfavorable final assessment rates.

## **Q6. What if I opt-in and am not chosen?**

A6. Exporters or producers that participate (opt in) and are not chosen for the administrative review are considered voluntary respondents.

Voluntary respondents may still be required to respond to information requests from Commerce.

Similar to the last SWL administrative review in 2020 (AR2), Commerce may issue a letter to all companies that opted in, requesting total production and quantity of subject merchandise exported to the United States during the period of review.

Based on the information available, Commerce will determine the final assessment rate and calculate the total amount of duties that are owed on entries during the period of review.

It is important to respond as requested fully and accurately. Those who opt in and do not properly and timely respond may be considered to have impeded the process and therefore receive unfavorable final assessment rates.

## **Q7. How long do I have to decide if I am opting in or out?**

A7. The regulations state that requests for administrative reviews of antidumping and/or countervailing duties must be received during the anniversary month of the order. In the SWL cases, that would mean during the month of January, 2021.

## **Q8. We have paid various ADD/CVD rates at different times. What rate will be assessed?**

A8. ADD/CVD will be assessed at the last deposit rate (opt out) or the final rate determined by the administrative review (opt in).

## **Q9. How long will an Administrative review take?**

A9. Commerce's preliminary results are due within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review are due within 120 days after the date on which notice of the preliminary results was published in the Federal Register.

As we have seen, there are exceptions that can extend this time frame such as if Commerce determines that it is not feasible to complete the review within the time specified, they may extend the 245-day period to 365 days and may extend the 120-day period to 180 days, or if Commerce does not extend the time for issuing preliminary results, they may extend the time for issuing final results from 120 days to 300 days.

## **Q10. Who should I contact if I want to opt in?**

A10. To opt in, you should contact your legal counsel. Due to the nature of the initiation of the requests and the questions that will follow, they are the experts in this specific field of trade law and will know how best to guide you. This includes providing you with the letters and instructions to submit same via the ACCESS website.

As an FYI, all requests for Administrative Review must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at <http://access.trade.gov>. Further, a copy of each request must be served on the petitioner and each exporter or producer specified in the request and these parties are known to legal counsel. [19 CFR 351.303(f)(l)(i)]

## **Q11. What if our company changes its mind and no longer wishes to go into an Administrative Review after submitting the documentation to start the process? Can we withdraw (opt out)?**

A11. Yes, you can. If you have already requested a review, that request may be withdrawn within 90 days of the date of publication of the notice of initiation of the requested review. This regulation provides that Commerce may also extend this time if it is reasonable to do so. [19 CFR 351.213(d)(1)]

## **Q12. What if our company has not received any subsidies from the government of Canada, is there a way that we might request a "0%" (zero rate) Countervailing Duty Rate (CVD) under Administrative Review?**

A12. Yes, there is, but there are necessary steps and documentation to provide, as follows:

\*Request for zero rate. Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable.

An exporter or producer that desires a zero rate must submit:

1. A certification by the exporter or producer that it received zero or de minimis\*\* net countervailable subsidies during the period of review;
2. If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis\*\* during the period of review;
3. If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis\*\* net countervailable subsidies during the period of the review; and
4. A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than de minimis\*\* net countervailable subsidies during the period of

review. \*[19 CFR 351.213(k)]

Advice from your legal counsel on this and the Government of Canada's direct input to point # 4 is needed.

\*\*As an FYI, "de minimis" is LESS than 0.5%. [19 CFR 351.106(c)(2)]

### **Q13. Should I expect the same results as what was released for AR1?**

A13. Each Administrative review is based upon the factors that go into shipments imported during the period of review. It would be wise to contact your legal counsel for advice.

### **Q14. What should I do if I do not know what to do?**

A14. Contact your legal counsel to analyze your import activity during the period of review.