

**LIVINGSTON**  
*Simplify Trade*

# Softwood Lumber ADD/CVD

ADD/CVD Fact Sheet – Based on AR1

US Regulatory Affairs

January 26, 2021

# General Information

## Countervailing duty (CVD)

- On December 1, 2020, Message 0336411 was issued by the DOC for cash deposits instructions for the CVD duty on specific wood products from Canada (C-122-858).
- This included the results of the first Administrative Review (AR1) of this CVD case from April 28, 2017 through December 31, 2018.

Here is what it means for your shipments:

- As a result of Commerce's review, the cash deposit rates were revised for certain companies. Accordingly, for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after 12/01/2020, produced and/or exported by the companies named below, CBP shall collect a cash deposit of estimated countervailing duties at the percentages of the entered value, based on the company noted.
- A listing of the AR1 companies and their specific rate of CVD can be found [here](#)
- Companies NOT noted will retain their current CVD rate of 14.19% and case number C-122-858-000 ("All Others")

# General Information

## Antidumping duty (ADD)

- On December 8, 2020, Message 0343402 was issued by the DOC for the cash deposits instructions for the ADD duty on the specific wood products from Canada A-122-857).
- This included the results of the first Administrative Review (AR1) of this ADD case from June 30, 2017 through December 31, 2018.
- As a result of Commerce's review, the cash deposit rates were revised for certain companies. Accordingly, for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after 11/30/2020, produced and/or exported by the companies named below, CBP shall collect a cash deposit of estimated countervailing duties at the percentages of the entered value, based on the company noted.
- A listing of the AR1 companies and their specific rate of ADD can be found [here](#)
- Companies NOT noted will retain their current ADD rate of 6.04% and case number A-122-857-000 ("All Others")

# Lumber 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 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** have its own rate.  
*\*\*Use "rate applicable to Company B as the remanufactured product is a "new and different" product from the raw lumber purchased.*

# Products excluded from these AD/CVD cases

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

## EXEMPTIONS:

- Assembled pallets
- Assembled trusses and I-joists (including open-webbed floor joists)
- Assembled garage doors
- Assembled door and window frames
- Open-webbed floor joists
- Edge-glued wood
- Cross-laminated timber
- Assembled wood blinds
- Wood Moldings
- Wood Dowel Rods
- Assembled furniture and finished furniture kits,
- Assembled wood toys;
- Assembled wooden frames for paintings,
- Assembled wood blinds;
- Clothes hangers; tableware; trays;
- Wall art and marquetry,
- Butcher block countertops and cutting boards

# Products excluded from these AD/CVD cases

- Lumber produced in Nova Scotia, Prince Edward Island, and Newfoundland-Labrador from timber harvested in those provinces, and so certified by the Atlantic Lumber Bureau (ALB), will be excluded from both AD and CVD. **\*\*EFFECTIVE AS OF NOVEMBER 8, 2017\*\***
- US lumber exported to Canada and returned so long as it has not been further worked than:
  - Sanding
  - Planning to create smooth-to-size board
  - Kiln Dried

# Products denied exemption

- Stringers
- “Square cut” box-spring-frame components
- Fence pickets
- Truss components & kits
- Pallet components & kits
- Flooring
- Door frame parts
- Window frame parts
- Notched Pallet Runners
- Angle Cut Lumber
- Shims & Wedges
- 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



# 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/outreachprograms/entry-summary/public-laws-impacting-trade/public-law-110-246/softwood-lumber-act2008/softwood-act08>

# Questions and Answers

**Q - Can CVD/ADD be deducted from the invoice value?**

A - 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.

**Q - 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?**

A - 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.*

# Questions and Answers

**Q - 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?**

A - 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

*Note: Softwood Lumber permits are required under the Government of Canada export law. For more information on permits, visit [Global Affairs Canada](#) and their FAQ page found [here](#).*

# Questions and Answers

**Q - 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.?**

A - 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 unless the final processor in Canada does not have their own AR1 case number.*

**Q - 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.?**

A - If the processor does not have their own or an assigned AR1 case/rate, the “All Others” case C-122-858-000 with a rate of 14.19% should be used, along with A-122-857-000 for the ADD case which carries a 6.04% rate.

# 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 15 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 check.

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

# Bonds

## **Q - Will the retroactive CVD affect my continuous bond, if so how?**

A - 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.

The bond effective during the time subject ADD/CVD will be impacted and potentially saturated based on the volumes, values and applicable rates. This is why importers should be continually reviewing their current numbers now and gauging whether the existing bond will be good going forward, 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.

# Bonds (continued)

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

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



# Bonds (continued)

## Q - Should I increase my bond?

A - 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.

# Bonds (continued)

**Q - How is the bond amount determined and in what increments can they be written?**

A - 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.*

## Bonds (continued)

### Q - If I decide to increase the bond, what is the required process?

A - 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.

## Bonds (continued)

**Q - If I'm not using Avalon as a surety company, what's the process?**

A - 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.

**Q - If I increase my bond, will I need to do it again?**

A - It depends. For both AD/CVD, liabilities may be inadequate over time. Variables include: entry values, duty, taxes and fees.

If your bond for the 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.

## Bonds (continued)

### Q - 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.**

## Bonds (continued)

**Q - I have heard that Single Entry Bonds might be the way to go for my shipments. Is this true?**

A - 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.

**Q - What does the liability amount cover?**

A - 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 4/23/2019, the bond period covers up to 4/22/2020. Bond auto-renews on 4/23/2020. The next bond period would cover through 4/22/2021.

# Bonds (continued)

## Additional Notes on 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 your 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.

# Bonds (continued)

## Q - What is collateral, and why is it required?

A - 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 antidumping and countervailing)

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 antidumping and countervailing duties due to the volatile nature and unknown risk of the case.



## Bonds (continued)

**Q - Is the required bond amount or collateral required affected when I pay CVD to CBP on each entry?**

A - 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.

**Q - If collateral is required for CVD, when will it be released?**

A - 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 5/22/19, it covers up to 5/21/20 and will auto-renew on 5/22/20 starting another bond period. If collateral was obtained 5/22/19 for first bond period, all entries must liquidate before surety releases the collateral.

# Bonds (final page)

## Q - What is stacking?

A - 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.